

No. 16358 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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HARRY H. MEISNER,

Appellant,

vs.

RELIANCE STEEL & ALUMINUM CO., a Corporation and SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, Executor of the Estate of Thomas J. Neilan, Deceased,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Central Division

FILED  
MAR 23 1959  
PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

HARRY MEISNER,  
(Propria Persona),  
2233 National Bank Building,  
Detroit 26, Michigan.

For Appellees:

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,  
800 Standard Oil Building,  
Los Angeles, 15, California.





United States District Court for the Southern  
District of California, Central Division

Civil Action No. 525-58—WM

HARRY H. MEISNER,

Plaintiff,

vs.

RELIANCE STEEL & ALUMINUM CO., a California Corporation, and SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association, Executor of the Estate of Thomas J. Neilan, Deceased,

Defendants.

COMPLAINT

Count I.

The plaintiff says:

1. That the plaintiff, Harry H. Meisner, is a citizen of the State of Michigan, residing in the City of Detroit, in the State of Michigan; that the defendant, Reliance Steel & Aluminum Co., is a corporation incorporated under the laws of the State of California with offices and principal place of business in the City of Los Angeles in said district and a citizen of the State of California, and that the defendant, Security-First National Bank of Los Angeles is a National banking association with offices and principal place of business at Los Angeles in said state and district and a citizen of the State of California; that jurisdiction of this

action is founded on diversity of citizenship and that the matter in controversy exceeds the sum of three thousand dollars, exclusive of interest and costs. [2\*]

2. That the defendant, Security-First National Bank of Los Angeles, is the duly qualified and acting Executor of the estate of Thomas J. Neilan, deceased, under the will of said deceased duly admitted to probate by the Superior Court of the State of California, in and for the County of Los Angeles on December 13, 1957.

3. That during his lifetime, said Thomas J. Neilan was the president and controlling stockholder of Reliance Steel and Aluminum Co. and in charge of its activities.

4. That at various times between April, 1957, and August 2, 1957, the defendant, Reliance Steel and Aluminum Co., and said Thomas J. Neilan, on behalf of said corporation and for and on behalf of himself, as principal stockholder and party of interest in said corporation, acting sometimes in person and sometimes through various agents, employed plaintiff and one, Jack Moore, by various instruments in writing, as their agents and attorneys to find a purchaser ready, willing and able to purchase or acquire the assets of said corporation or the capital stock thereof on terms mutually agreeable, and agreed to pay the plaintiff and Jack Moore 5% of the first \$1,000,000 and 2½% of the remainder of the net purchase price on such sale.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

5. That subsequently it was agreed between the parties that one-half of said commission should be paid directly to plaintiff and the other half to Jack Moore.

6. That subsequent thereto, Harry H. Meisner fully performed said agreement by finding a purchaser ready, willing and able to purchase such interests, namely, Myron Hokin, individually and as agent for H. W. & G. Corporation, on terms mutually acceptable to the parties for a total price of approximately \$3,750,000. That a written agreement was entered into covering [3] such sale; and the purchaser made a deposit of \$250,000 on the purchase price and was ready, willing and able to perform such purchase according to the terms of the written purchase agreement of October 2, 1957, and the various riders and amendments thereto. That all conditions have been completed precedent to defendants' liability for such commission except the actual closing of such sale, which condition has been waived by defendants by their refusal to complete the sale although the other party has been ready, willing and able to perform, and that defendants are estopped to require performance or compliance with such condition.

7. That defendants thereupon became indebted to plaintiff for a commission in the amount of approximately \$60,000. That the defendants have refused to pay said commission or any part thereof although payment has frequently been requested.

Wherefore, plaintiff claims judgment in the sum of \$75,000.00.

Count II.

1-7. Plaintiff herein repeats each and every allegation of paragraphs 1 to 7, inclusive, of Count I.

8. That being so indebted to plaintiff, Harry H. Meisner, for the commission aforesaid, the said defendants on a day certain, namely, November 12, 1957, did assume and agree to pay plaintiff one-half thereof or the sum of \$30,000 if and when such sale and purchase agreement should be executed.

9. That although said agreement has been executed and plaintiff has fully performed all conditions precedent to defendants' liability aforesaid, defendants have refused to pay [4] said sums or any part thereof although payment has often been requested.

Wherefore, plaintiff claims judgment in the sum of \$75,000.

Dated May 29, 1958.

/s/ HARRY H. MEISNER,  
Plaintiff, Appearing in  
Propria Persona.

Complaint amended July 2, 1958.

[Endorsed]: Filed June 2, 1958. [5]

[Title of District Court and Cause.]

AMENDED COMPLAINT

Count I.

The plaintiff says:

1. That the plaintiff, Harry H. Meisner, is a citizen of the State of Michigan residing in the City of Detroit, in the State of Michigan; that the defendant, Reliance Steel & Aluminum Co., is a corporation incorporated under the laws of the State of California with offices and principal place of business in the City of Los Angeles in said district and a citizen of the State of California, and that the defendant, Security-First National Bank of Los Angeles is a National banking association with offices and principal place of business at Los Angeles in said state and district and a citizen of the State of California; that jurisdiction of this action is founded on diversity of citizenship and that the matter in controversy exceeds the sum of three thousand dollars, exclusive of interest and costs. [7]

2. That the defendant, Security-First National Bank of Los Angeles, is the duly qualified and acting Executor of the estate of Thomas J. Neilan, deceased, under the will of said deceased duly admitted to probate by the Superior Court of the State of California, in and for the County of Los Angeles on December 13, 1957.

3. That during his lifetime, said Thomas J.



Neilan was the president and controlling stockholder of Reliance Steel and Aluminum Co. and in charge of its activities.

4. That at various times between April, 1957, and August 2, 1957, the defendant, Reliance Steel and Aluminum Co., and said Thomas J. Neilan, on behalf of said corporation and for and on behalf of himself, as principal stockholder and party of interest in said corporation, acting sometimes in person and sometimes through various agents, employed plaintiff and one, Jack Moore, by various instruments in writing, as their agents and attorneys to find a purchaser ready, willing and able to purchase or acquire the assets of said corporation or the capital stock thereof on terms mutually agreeable, and agreed to pay the plaintiff and Jack Moore 5% of the first \$1,000,000 and 2½% of the remainder of the net purchase price on such sale.

5. That subsequently it was agreed between the parties that one-half of said commission should be paid directly to plaintiff and the other half to Jack Moore.

6. That subsequent thereto, Harry H. Meisner fully performed said agreement by finding a purchaser ready, willing and able to purchase such interests, namely, Myron Hokin, individually and as agent for H. W. & G. Corporation, on terms mutually acceptable to the parties for a total price of approximately \$3,750,000. That a written agreement was entered into covering [8] such sale; and

the purchaser made a deposit of \$250,000 on the purchase price and was ready, willing and able to perform such purchase according to the terms of the written purchase agreement of October 2, 1957, and the various riders and amendments thereto. That all conditions have been completed precedent to defendants' liability for such commission except the actual closing of such sale, which condition has been waived by defendants by their refusal to complete the sale although the other party has been ready, willing and able to perform, and that defendants are estopped to require performance or compliance with such condition.

7. That defendants thereupon became indebted to plaintiff for a commission in the amount of approximately \$60,000. That the defendants have refused to pay said commission or any part thereof although payment has frequently been requested.

8. That on or about June 10, 1958, plaintiff served a copy of his claim upon the defendant executor by registered mail with postage fully paid under Detroit postal registry No. 347,257 and has received therefor United States Postal Receipt dated June 11, 1958, signed for and in the name of defendant, Security-First National Bank of Los Angeles, by a name which appears to be Tom V. Doud or Tom V. David. That said service was made upon such executor in conformance with California Probate Code Sec. 700, et seq., and particularly Sec. 711 within the time limited by said section although the same is believed to be inap-

plicable to actions in the United States District Courts.

Wherefore, plaintiff claims judgment in the sum of \$75,000.00.

Count II.

1-7. Plaintiff herein repeats each and every allegation of paragraphs 1 to 7, inclusive of Count I.

8. That being so indebted to plaintiff, Harry H. Meisner, for the commission aforesaid and in consideration thereof, the said defendants on a day certain, namely, November 12, 1957, did assume and agree to pay plaintiff one-half thereof or the sum of \$30,000 if and when such sale and purchase agreement should be executed.

9. That although said agreement has been executed and plaintiff has fully performed all conditions precedent to defendants' liability aforesaid, defendants have refused to pay said sums or any part thereof although payment has often been requested.

10. Plaintiff herein repeats the allegations of paragraph 8 of Count I.

Wherefore, plaintiff claims judgment in the sum of \$75,000.

Dated June 17th, 1958.

/s/ HARRY H. MEISNER,  
Plaintiff, Appearing in  
Propria Persona.

[Endorsed]: Filed July 2, 1958. [10]



[Title of District Court and Cause.]

ANSWER OF DEFENDANT RELIANCE  
STEEL & ALUMINUM CO. TO PLAINTIFF'S AMENDED COMPLAINT

First Defense

1. Defendant admits the allegations contained in paragraphs 1 and 2 of the first and second counts of the amended complaint; denies the allegations contained in paragraph 3 of the first and second counts of the amended complaint; alleges that during the portion of the year 1957 ending with his death, and for some years prior thereto, Thomas J. Neilan was the President and one of the Directors of defendant and indirectly controlled a majority of the shares of defendant's issued and outstanding capital stock; denies the allegations contained in paragraphs 4, 5, 6 and 7 of the first [11] and second counts of the amended complaint except the implied allegation contained in paragraph 7 of the first and second counts of the amended complaint that defendant has refused to pay any commission to plaintiff although payment has been requested of defendant; alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the first count and paragraph 10 of the second count of the amended complaint; denies the allegations contained in paragraphs 8 and 9 of the second count of the amended complaint except the

implied allegation contained in said paragraph 9 that defendant has refused to pay \$30,000 or any part thereof to plaintiff although payment has been requested of defendant.

### Second Defense

2. The amended complaint fails to state a claim against the defendant upon which relief can be granted.

### Third Defense

3. Plaintiff has failed to join Jack Moore who is an indispensable party to this action.

### Fourth Defense

4. Defendant alleges on information and belief that if the sale alleged in the amended complaint was agreed upon, said alleged sale was negotiated in part by plaintiff in the State of California; further alleges on information and belief that plaintiff was not then licensed so to do either by the Real Estate Commissioner or the Commissioner of Corporations of said State; further alleges on information and belief that at no time mentioned in the amended complaint was plaintiff licensed to practice law in said State. [12]

### Fifth Defense

5. That if defendant is indebted to plaintiff on account of the purported transactions set forth in

the amended complaint, defendant alleges on information and belief that it is indebted to plaintiff and Jack Moore jointly; alleges that said Jack Moore is alive; further alleges on information and belief that said Jack Moore is a citizen of the State of Arizona and can be made a party without depriving the court of jurisdiction of this action; further alleges that said Jack Moore has not been made a party.

#### Sixth Defense

6. If a contract were made as alleged in the amended complaint by and between Thomas J. Neilan, deceased, and plaintiff, defendant alleges that plaintiff failed to perform on his part for the reasons that Myron Hokin, whether acting individually or as agent for H. W. & G. Corporation, did not agree to purchase, and plaintiff did not find a purchaser ready, willing or able to purchase, the assets or the shares of capital stock of defendant on terms acceptable to defendant and said deceased, or either of them.

#### Seventh Defense

7. If a contract were made as alleged in the amended complaint by and between Thomas J. Neilan, deceased, and plaintiff, defendant alleges on information and belief that the contract was made in the State of California, is not evidenced by a writing subscribed by said deceased, defendant or the agent of either of them, and was not to

be performed by its terms within a year from the time of its making.

Wherefore, defendant prays judgment that plaintiff take [13] nothing by his amended complaint and for costs of defendant.

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ WILLIAM T. COFFIN,  
Attorneys for Defendant Reliance Steel & Aluminum Co.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 7, 1958. [14]

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[Title of District Court and Cause.]

ANSWER OF DEFENDANT SECURITY-  
FIRST NATIONAL BANK, AS EXECU-  
TOR, TO PLAINTIFF'S AMENDED COM-  
PLAINT

First Defense

1. Defendant admits the allegations contained in paragraphs 1 and 2 of the first and second counts of the amended complaint; alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained

in paragraphs 3, 4 and 5 of the first and second counts of the amended complaint; denies the allegations contained in paragraphs 6 and 7 of the first and second counts of the amended complaint except the implied allegation contained in paragraph 7 of the first and second counts of the amended complaint that defendant Reliance Steel & [16] Aluminum Co. has refused to pay any commission to plaintiff although payment has been requested of said Reliance Steel & Aluminum Co.; denies the allegations contained in paragraph 8 of the first count and paragraph 10 of the second count of the amended complaint; alleges that defendant received by registered mail on June 11, 1958, a document purporting to be a verified claim of plaintiff against the estate of Thomas J. Neilan, deceased, unto which was appended a copy of the original complaint on file herein; alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the second count of the amended complaint; denies the allegations contained in paragraph 9 of the second count of the amended complaint except the implied allegation that defendant Reliance Steel & Aluminum Co. has refused to pay \$30,000 or any part thereof to plaintiff although payment has been requested of said Reliance Steel & Aluminum Co.

### Second Defense

2. The amended complaint fails to state a claim against defendant upon which relief can be granted.



## Third Defense

3. Plaintiff has failed to join Jack Moore who is an indispensable party to this action.

## Fourth Defense

4. Plaintiff's claim against the estate of Thomas J. Neilan, deceased, upon which this action is founded, was neither presented to defendant nor filed with the clerk of the court in which said deceased's probate proceedings are pending prior to the commencement of this action. [17]

## Fifth Defense

5. Defendant alleges on information and belief that if the sale alleged in the amended complaint was agreed upon, said alleged sale was negotiated in part by plaintiff in the State of California; further alleges on information and belief that plaintiff was not then licensed either by the Real Estate Commissioner or the Commissioner of Corporations of said State so to do; further alleges on information and belief that at no time mentioned in the amended complaint was plaintiff licensed to practice law in said State.

## Sixth Defense

6. If defendant is indebted to plaintiff on account of the purported transactions set forth in the amended complaint, defendant alleges on information and belief that it is indebted to plaintiff

and Jack Moore jointly; alleges that said Jack Moore is alive; further alleges on information and belief that said Jack Moore is a citizen of the State of Arizona and can be made a party without depriving the court of jurisdiction of this action; further alleges that said Jack Moore has not been made a party.

#### Seventh Defense

7. If a contract were made as alleged in the amended complaint by and between Thomas J. Neilan, deceased, and plaintiff, defendant alleges on information and belief that plaintiff failed to perform on his part for the reasons that Myron Hokin, whether acting individually or as agent for H. W. & G. Corporation, did not agree to purchase, and plaintiff did not find a purchaser ready, willing or able to purchase, the assets or the shares of capital stock of Reliance Steel & Aluminum Co. on terms acceptable to said Reliance Steel & Aluminum Co. and said deceased, or either of [18] them.

#### Eighth Defense

8. If a contract were made as alleged in the amended complaint by and between Thomas J. Neilan, deceased, and plaintiff, defendant alleges on information and belief that the contract was made in the State of California, is not evidenced by a writing subscribed by said deceased or his agent and was not to be performed by its terms within a year from the time of its making.

Wherefore, defendant prays judgment that plaintiff take nothing by his amended complaint and for costs of defendant.

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ WILLIAM T. COFFIN,  
Attorneys for Defendant Security-First National  
Bank, as Executor of the Will of Thomas J.  
Neilan, Deceased.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 7, 1958. [19]

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[Title of District Court and Cause.]

INTERROGATORIES BY DEFENDANT RE-  
LIANCE STEEL & ALUMINUM CO. TO  
PLAINTIFF

To Harry H. Meisner, Plaintiff:

You are hereby notified to answer the following interrogatories under oath within fifteen days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure: [21]

\* \* \*

27. Identify by date and signatory or signatories all the "various instruments in writing" referred to in paragraph 4 of the first and second



counts of the complaint and state of which such instruments you have a copy or the original.

28. When was the agreement referred to in paragraph 5 of the first and second counts of the complaint made?

29. Name all the parties between whom such agreement was made.

30. Is such agreement evidenced by a writing?

\* \* \*

35. Identify by date and signatories the written agreement first referred to in paragraph 6 of the first and second counts of the complaint. [24]

\* \* \*

39. Is the written purchase agreement of October 2, 1957, referred to in paragraph 6 of the first and second counts of the complaint the same as the agreement first referred to therein?

\* \* \*

43. Identify with particularity by date and signatories all the "various riders and amendments" to the written purchase agreement of October 2, 1957, referred to in paragraph 6 of the first and second counts of the complaint.

44. Identify those documents specified in your answer to interrogatory number 43 of which you have a copy or the original.

45. State the date upon which you contend you completed your performance and were entitled to a commission.

46. Did you come to California at any time after April, 1947, in connection with the employment referred to in paragraph 3 of the first and second counts of the complaint? [25]

47. If your answer to interrogatory number 46 is yes, give the dates that you were here in California in connection with said employment from April 1, 1957, to the date given in your answer to interrogatory number 45.

48. With whom was the deposit of \$250,000 referred to in paragraph 6 of the first and second counts of the complaint made?

49. When was such deposit made?

50. Who made such deposit?

51. Was the deposit accompanied by written instructions regarding the disposition of the funds?

52. If your answer to interrogatory number 51 is yes, identify the writing or writings by date and signatories and state of which such writings you have a copy or the original.

53. Are you now or have you ever been licensed to practice law in the State of California?

\* \* \*

55. Are you now or have you ever been licensed by the Commissioner of Corporations of the State of California as a securities broker or agent?

\* \* \*

57. Are you now or have you ever been licensed

by the Real Estate Commissioner of the State of California as a real estate broker or salesman?

\* \* \*

59. Are you now or have you ever been licensed by the Real Estate Commissioner of the State of California as a business opportunity broker or salesman? [26]

\* \* \*

65. When was the agreement first referred to in paragraph 6 of the first and second counts of the complaint executed? [27]

\* \* \*

Dated this 2nd day of July, 1958.

Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 3, 1958. [28]

[Title of District Court and Cause.]

PLAINTIFF'S ANSWERS TO INTERROGA-  
TORIES OF RELIANCE STEEL & ALU-  
MINUM CO.

Harry H. Meisner, plaintiff aforesaid, answers said interrogatories by number as follows: [30]

\* \* \*

27. Instruments in writing.

a. July 30, 1957, Letter, Gimbel to Meisner, on Reliance letterhead.

b. Oct. 7, 1957, Letter, Neilan to Meisner, on Reliance letterhead.

c. Nov. 12, 1957, Letter, Neilan to Meisner, on plain paper, but signed as President, Reliance Steel.

28. By letters, November 12, 1957, and November 18, 1957.

29. Parties, Thomas J. Neilan, Reliance Steel and Harry H. Meisner.

30. By the two letters from Neilan to Meisner and Meisner to Neilan listed in answer 28.

\* \* \*

35. Agreement, September 30, 1957, as amended, signed by Myron Hokin and accepted subject to rider by Reliance Steel and Aluminum Company, by T. J. Neilan, its President and Chairman of the Board, and by Thomas J. Neilan, individually, as Principal Stockholder of Reliance Steel and Aluminum Company. The rider is stated to be ap-

proved October 2, 1957, and signed by Reliance Steel and Aluminum Company by Thomas J. Neilan and by Myron Hokin. [32]

\* \* \*

39. Yes. The agreement is dated September 30, 1957, and the rider October 2, 1957.

\* \* \*

43 and 44. Plaintiff is unable to do so, except to state that the instrument dated October 2, 1957, is itself a rider.

45. On or about October 2, 1957, when Myron Hokin signed the rider described in (35).

46 and 47. Yes. On or about August 11, 1957. On or about September 26, 1957, and possibly two other occasions about that time.

48. Security-First National Bank of Los Angeles.

49. On or about October 3, 1957.

50. The check was left by Mr. Meisner with Mr. Neilan and by him deposited with the Bank.

51 and 52. Yes, in letter from Myron Hokin to Paul D. Dodds, Senior Vice President of Security First National Bank dated on or about September 30, 1957.

53. No.

\* \* \*

55. No.

\* \* \*

57. No.

\* \* \*

59. No.

\* \* \*

65. Agreement, September 30, 1957; Rider, October 2, 1957. [33]

\* \* \*

/s/ HARRY H. MEISNER.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed July 11, 1958. [34]

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[Title of District Court and Cause.]

FIRST REQUEST FOR ADMISSIONS  
UNDER RULE 36, F.R.C.P.

To Harry H. Meisner, Plaintiff:

Defendant Reliance Steel & Aluminum Co. hereby requests that, within 10 days after service of this request, you make the following admissions for the purpose of the above-named action only, and subject to all pertinent objections to admissibility which may be interposed at trial:

1. That the photostat, marked Exhibit "A," attached hereto and exhibited herewith is a true copy of a letter (hereinafter called "said letter") of



Myron Hokin dated September 30, 1957, to Mr. Paul D. Dodds, Senior Vice President, Security-First National Bank of Los [37] Angeles;

2. That the photostat, marked Exhibit "B," attached hereto and exhibited herewith, is a true copy of the enclosure (hereinafter called "said enclosure") identified in said Exhibit "A" as "proposal submitted to Reliance Steel & Aluminum Company and Thomas J. Neilan";

3. That said letter was executed on or about the date that it bears, viz., September 30, 1957, by said Myron Hokin;

4. That said letter and said enclosure, together with a cashier's check payable to the order of Security-First National Bank of Los Angeles in the sum of \$250,000, were delivered to the addressee on or about October 3, 1957;

5. That said \$250,000 check is the sum alleged in paragraph 6 of the first and second counts of plaintiff's amended complaint to be a deposit on the purchase price for the sale of certain assets of Reliance Steel & Aluminum Co. to Myron Hokin, individually and as agent for H. W. & G. Corporation;

6. That said letter constituted all the instructions to the addressee regarding the disposition of said \$250,000 check other than the demand made by said Myron Hokin on or about December 27, 1957, for its return;

7. That said enclosure, comprising four pages, is a true copy of the instrument alleged in paragraph 6 of the first and second counts of plaintiff's amended complaint to be the written agreement entered into between Myron Hokin, individually and as agent for H. W. & G. Corporation, and Reliance Steel & Aluminum Co. and Thomas J. Neilan;

8. That said enclosure is a copy of the only purported agreement upon which plaintiff relies in his contention that he found a purchaser ready, willing and able to purchase or acquire the assets or the capital stock of Reliance Steel & Aluminum Co. on terms [38] mutually agreeable to the prospective purchaser and to Reliance Steel & Aluminum Co. and Thomas J. Neilan.

Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendant Reliance Steel & Aluminum Co.

[Endorsed]: Filed August 5, 1958. [39]



[Title of District Court and Cause.]

PLAINTIFF'S ADMISSIONS IN RESPONSE  
TO DEFENDANTS' FIRST REQUEST  
FOR ADMISSIONS

To Lawler, Felix & Hall, etc.,  
Attorneys for the Defendants:

Harry H. Meisner hereby makes the following  
Admissions in response to Defendants' First Re-  
quest for Admissions:

1, 2, 3, 4, and 5. He admits the matters con-  
tained in Defendants' Requests numbers 1, 2, 3, 4  
and 5.

6. He admits that said letter constituted all the  
instructions to the addressee regarding the \$250,-  
000 check except that he has no knowledge of the  
alleged demand dated December 27, 1957, by Myron  
Hokin for its return.

7 and 8. He admits the matters contained in  
Defendants' Requests numbers 7 and 8.

/s/ HARRY H. MEISNER,  
Plaintiff.

Affidavit of Service by Mail attached.

Noted and signed: Filed August 20, 1958. [48]

7. That said enclosure, comprising four pages, is a true copy of the instrument alleged in paragraph 6 of the first and second counts of plaintiff's amended complaint to be the written agreement entered into between Myron Hokin, individually and as agent for H. W. & G. Corporation, and Reliance Steel & Aluminum Co. and Thomas J. Neilan;

8. That said enclosure is a copy of the only purported agreement upon which plaintiff relies in his contention that he found a purchaser ready, willing and able to purchase or acquire the assets or the capital stock of Reliance Steel & Aluminum Co. on terms [38] mutually agreeable to the prospective purchaser and to Reliance Steel & Aluminum Co. and Thomas J. Neilan.

Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendant Reliance Steel & Aluminum Co.

[Endorsed]: Filed August 5, 1958. [39]

Exhibits "A" and "B" attached to the First request for Admissions are reproduced as similarly marked "A" and "B" to Motion for Summary Judgement and appears herein at pages 78-84;

[Title of District Court and Cause.]

PLAINTIFF'S ADMISSIONS IN RESPONSE  
TO DEFENDANTS' FIRST REQUEST  
FOR ADMISSIONS

To Lawler, Felix & Hall, etc.,  
Attorneys for the Defendants:

Harry H. Meisner hereby makes the following  
Admissions in response to Defendants' First Re-  
quest for Admissions:

1, 2, 3, 4, and 5. He admits the matters con-  
tained in Defendants' Requests numbers 1, 2, 3, 4  
and 5.

6. He admits that said letter constituted all the  
instructions to the addressee regarding the \$250,-  
000 check except that he has no knowledge of the  
alleged demand dated December 27, 1957, by Myron  
Hokin for its return.

7 and 8. He admits the matters contained in  
Defendants' Requests numbers 7 and 8.

/s/ HARRY H. MEISNER,  
Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 20, 1958. [48]

[Title of District Court and Cause.]

SECOND REQUEST FOR ADMISSIONS  
UNDER RULE 36, F.R.C.P.

To Harry H. Meisner, Plaintiff:

Defendant Reliance Steel & Aluminum Co. hereby requests that, within 10 days after service of this request, you make the following admissions for the purpose of the above-named action only, and subject to all pertinent objections to admissibility which may be interposed at trial:

1. Admit that Thomas J. Neilan died on November 17, 1957. [51]

\* \* \*

4. Admit that Jack Moore represented to you by telephone July 21, 1957, that he had an agreement with Reliance Steel whereby he would receive a sales commission of 5% of the first \$1,000,000 plus 2½% of the balance of the sale price for the business of Reliance Steel if and when such a sale were consummated.

5. Admit that you reached an agreement with Jack Moore during the aforesaid July 21, 1957, telephone conversation between you and him whereby Moore promised to pay you one-half of the total sales commission he received on account of the sale of the business of Reliance Steel if you were responsible for the consummation of such sale.

6. Admit that the photostat, marked Exhibit "C," attached hereto and exhibited herewith is a true copy of a letter of Jack Moore dated July 21, 1957 (hereinafter called the "Moore July 21 letter"), to you.

7. Admit that the Moore July 21 letter was executed on or about the date that it bears by Jack Moore and that you thereafter received the same on or about July 25 in the ordinary course of the United States mail.

8. Admit that the photostat, marked Exhibit "D," attached hereto and exhibited herewith, is a true copy of a letter from you dated July 25, 1957 (hereinafter called the "Meisner July 25 letter"), to Jack Moore.

9. Admit that the Meisner July 25 letter was signed by you on or about the date that it bears and was thereupon deposited in [52] the United States mail in an envelope addressed to Jack Moore with postage fully prepaid.

10. Admit that the terms of your employment agreement made July 21, 1957, with Jack Moore are fully set forth in the Moore July 21 letter and the Meisner July 25 letter.

11. Admit that the employment agreement made July 21, 1957, between you and Jack Moore was the only employment agreement ever reached by you on or before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel.

12. Admit that the photostat, marked Exhibit "E," attached hereto and exhibited herewith, is a true copy of the letter from William T. Gimbel dated July 30, 1957 (hereinafter called the "Gimbel July 30 letter"), to you.

13. Admit that the Gimbel July 30 letter was signed by William T. Gimbel on or about the date that it bears and that it was thereafter received by you in the ordinary course of the United States mail.

\* \* \*

16. Admit that the photostat, marked Exhibit "G," attached hereto and exhibited herewith, is a true copy of a letter from Thomas J. Neilan dated October 7, 1957 (hereinafter called the "Neilan October 7 letter"), to you.

17. Admit that the Neilan October 7, 1957, letter was [53] received by you in the ordinary course of the United States mail on or about October 10, 1957.

18. Admit that the photostat, marked Exhibit "H," attached hereto and exhibited herewith, is a true copy of a letter from Thomas J. Neilan dated November 12, 1957 (hereinafter called the "Neilan November 12 letter").

19. Admit that the plain copy, marked Exhibit "J," attached hereto and exhibited herewith, is a true copy of the enclosure (hereinafter called the "Neilan November 12 letter enclosure"), identified



in the Neilan November 12 letter as "the enclosed letter."

20. Admit that the Neilan November 12 letter and the Neilan November 12 letter enclosure were received by you in the ordinary course of the United States mail on or about November 15, 1957.

21. Admit that the Gimbel July 30 letter, the Neilan October 7 letter and the Neilan November 12 letter are all the various instruments in writing upon which you rely as evidence of your alleged employment by Reliance Steel and Thomas J. Neilan, as set forth in your answer Number 27 to defendant Reliance Steel's first interrogatories to you.

22. Admit that you never executed the Neilan November 12 letter enclosure.

23. Admit that the photostat, marked Exhibit "K," attached hereto and exhibited herewith, is a true copy of a letter from you dated November 18, 1957 (hereinafter called the Meisner November 18 letter"), to Thomas J. Neilan.

24. Admit that the photostat, marked Exhibit "L," attached hereto and exhibited herewith, is a true copy of a letter enclosure dated November 18, 1957 (hereinafter called the "Meisner November 18 letter enclosure"), signed by you on or about the date that it bears, addressed to Thomas J. [54] Neilan.

25. Admit that you signed the Meisner November 18 letter and the Meisner November 18 letter

enclosure on or about the date they bear and promptly forwarded the same together by prepaid United States mail to the addressee.

26. Admit that the Meisner November 18 letter, the Meisner November 18 letter enclosure and the Neilan November 12 letter are all the writings which evidence the purported agreement you allege was made in paragraph 5 of the first and second counts of your amended complaint, agreeably with your answers to defendant Reliance Steel's first interrogatories to you numbered 28, 29 and 30.

\* \* \*

30. Admit that no agreement relative to who constituted the key personnel referred to in the purported sale agreement was ever reached between Myron Hokin and Reliance Steel or Thomas J. Neilan.

31. Admit that no agreement relative to the form of the key personnel employment agreement, as contemplated by the purported sale agreement, was ever reached between Myron Hokin and [55] Reliance Steel or Thomas J. Neilan.

32. Admit that no draft of any proposed employment agreement was at any time submitted by Myron Hokin or his representatives to Reliance Steel or to any of its officers or employees. [57]

\* \* \*



Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendant Reliance Steel & Alumi-  
num Co.

[Endorsed]: Filed August 29, 1958. [58]

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[Title of District Court and Cause.]

SECOND INTERROGATORIES BY DEFEND-  
ANT RELIANCE STEEL & ALUMI-  
NUM CO.

To Harry H. Meisner, Plaintiff:

You are hereby notified to answer the following interrogatories under oath within fifteen days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure. [71]

\* \* \*

4. State the substance of your July 11, 1957, telephone conversation with Jack Moore, separately identifying your statements and those of Mr. [72] Moore.

\* \* \*

on 11 of this de-  
is a denial,

enclosure on or about the date they bear and promptly forwarded the same together by prepaid United States mail to the addressee.

26. Admit that the Meisner November 18 letter, the Meisner November 18 letter enclosure and the Neilan November 12 letter are all the writings which evidence the purported agreement you allege was made in paragraph 5 of the first and second counts of your amended complaint, agreeably with your answers to defendant Reliance Steel's first interrogatories to you numbered 28, 29 and 30.

\* \* \*

30. Admit that no agreement relative to who constituted the key personnel referred to in the purported sale agreement was ever reached between Myron Hokin and Reliance Steel or Thomas J. Neilan.

31. Admit that no agreement relative to the form of the key personnel employment agreement, as contemplated by the purported sale agreement, was ever reached between Myron Hokin and [55] Reliance Steel or Thomas J. Neilan.

32. Admit that no draft of any proposed employment agreement was at any time submitted by Myron Hokin or his representatives to Reliance

Exhibits "C", "D", "E", "F", "G", "H", "J", "L" attached to Second Request for Ad-

missions are reproduced as similarly marked Exhibits to Motion for Summary Judgement and appear herein at pages 85-94.

Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendant Reliance Steel & Alumi-  
num Co.

[Endorsed]: Filed August 29, 1958. [58]

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[Title of District Court and Cause.]

SECOND INTERROGATORIES BY DEFEND-  
ANT RELIANCE STEEL & ALUMI-  
NUM CO.

To Harry H. Meisner, Plaintiff:

You are hereby notified to answer the following interrogatories under oath within fifteen days of the time service is made upon you, in accordance with Rule 33 of the Federal Rules of Civil Procedure. [71]

\* \* \*

4. State the substance of your July 11, 1957, telephone conversation with Jack Moore, separately identifying your statements and those of Mr. [72] Moore.

\* \* \*

18. If your response to Number 11 of this defendant's second request for admission is a denial,

set forth the terms of each of the alleged employment agreements made by you before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel, state when, with whom and in whose presence each such employment agreement was made and identify which of such alleged employment agreements, if any, are evidenced by a writing. [73]

22. If your response to number 21 of this defendant's second request for admissions is a denial, identify such other instruments in writing upon which you rely as evidence of your alleged employment by Reliance Steel and Thomas J. Neilan and explain the inconsistency between your said response and your answer number 27 to this defendant's first interrogatories to you. [74]

\* \* \*

28. Describe in detail, listing by date, place and service performed, the efforts you expended in bringing "(Neilan) and Hokin to a mutual understanding" as set forth in the Meisner November 18 letter, being Exhibit "K" to this defendant's second request for admissions.

29. Itemize the expenses, including travel, hotel, telephone and entertainment expense, listing the same by date, amount, person paid and subject of the expense, that you incurred in bringing "(Neilan) and Hokin to a mutual understanding" as set forth in the Meisner November 18 letter, being Ex-

hibit "K" to this defendant's second request for admissions.

30. State for which of the expenses itemized in the answer to interrogatory number 29 you have invoices.

\* \* \*

33. On what date or dates do you contend that Reliance Steel and Thomas J. Neilan, or either of them, refused to complete the purported sale?

34. When and by whom was demand made upon this defendant to complete the purported sale?

35. When and by whom was demand made upon Thomas J. Neilan, deceased, or upon the executor of said deceased's will to complete the purported sale? [75]

\* \* \*

Respectfully submitted,

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendant Reliance Steel & Aluminum Co.

[Endorsed]: Filed August 29, 1958. [76]

[Title of District Court and Cause.]

PLAINTIFF'S ADMISSIONS PURSUANT TO  
DEFENDANTS' SECOND REQUEST

Harry H. Meisner, Plaintiff herein, appearing propria persona, makes the following admissions pursuant to Defendants' second request:

1. He admits that Thomas J. Neilan died on November 17, 1957.

\* \* \*

4. He denies Request No. 4. However he admits that Jack Moore represented to him by telephone July 21, 1957, that he had an agreement with Reliance Steel whereby he would receive a sales commission of 5% of the first \$1,000,000 plus 2½% of the balance of the sale [78] price for the stock, assets or business of Reliance Steel if and when such a sale were consummated.

5. He denies Request No. 5. However he admits that he reached an agreement with Jack Moore during the aforesaid July 21, 1957, telephone conversation between Moore and him whereby Moore promised that Plaintiff would receive one-half of the total sales commission from the sale of the stock, assets or business of Reliance Steel if he should be responsible for the consummation of such sale.

6. He admits that the photostat, marked Exhibit "C," attached to Defendants' Second Request and exhibited therewith is a true copy of a letter



of Jack Moore dated July 21, 1957 (hereinafter called the "Moore July 21 letter"), to him.

7. He admits that the Moore July 21 letter was executed on or about the date that it bears by Jack Moore and that he thereafter received the same on or about July 25 in the ordinary course of the United States mail.

8. He admits that the photostat, marked Exhibit "D," attached to Defendants' Second Request and exhibited therewith, is a true copy of a letter from him dated July 25, 1957 (hereinafter called the "Meisner July 25 letter"), to Jack Moore.

9. He admits that the Meisner July 25 letter was signed by him on or about the date that it bears and was thereupon deposited in the United States mail in an envelope addressed to Jack Moore with postage fully prepaid.

10. He denies the 10th Request. However he admits that the terms of the agreement made July 21, 1957, with Jack Moore are set forth in the Moore July 21 letter and the Meisner July 25 letter.

11. He denies the 11th Request. However he admits that the agreement made July 21, 1957, between him and Jack Moore was the agreement reached between him and Moore on or before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel. [79]

12. He admits that the photostat, marked Exhibit "E," attached to Defendants' Second Request

and exhibited therewith, is a true copy of the letter from William T. Gimbel dated July 30, 1957 (hereinafter called the "Gimbel July 30 letter"), to him.

13. He admits that the Gimbel July 30 letter was signed by William T. Gimbel on or about the date that it bears and that it was thereafter received by him in the ordinary course of the United States mail.

\* \* \*

16. He admits that the photostat, marked Exhibit "G," attached to Defendants' Second Request and exhibited therewith, is a true copy of a letter from Thomas J. Neilan dated October 7, 1957 (hereinafter called the "Neilan October 7 letter"), to him.

17. He admits that the Neilan October 7, 1957, letter was received by him in the ordinary course of the United States mail on or about October 10, 1957.

18. He admits that the photostat, marked Exhibit "H," attached to Defendants' Second Request and exhibited therewith, is a true copy of a letter from Thomas J. Neilan dated November 12, 1957 (hereinafter called the "Neilan November 12 letter").

19. He admits that the plain copy, marked Exhibit "J," attached to Defendants' Second Request and exhibited therewith, is a true copy of the enclosure (hereinafter called the "Neilan November

12 letter enclosure'') identified in the Neilan November 12 letter as "the enclosed letter." [80]

20. He admits that the Neilan November 12 letter and the Neilan November 12 letter enclosure were received by him in the ordinary course of the United States mail on or about November 15, 1957.

21. He denies Request 21. However he admits that the Gimbel July 30 letter, the Neilan October 7 letter and the Neilan November 12 letter are instruments in writing upon which he relies as evidence of his employment by Reliance Steel and Thomas J. Neilan, as set forth in his answer number 27 to Defendant Reliance Steel's first interrogatories to him.

22. He admits that he never executed the Neilan November 12 letter enclosure.

23. He admits that the photostat, marked Exhibit "K," attached to Defendants' Second Request and exhibited therewith, is a true copy of a letter from him dated November 18, 1957 (hereinafter called the "Meisner November 18 letter") to Thomas J. Neilan.

24. He admits that the photostat, marked Exhibit "L," attached to Defendants' Second Request and exhibited therewith, is a true copy of a letter enclosure dated November 18, 1957 (hereinafter called the "Meisner November 18 letter enclosure"), signed by him on or about the date that it bears, addressed to Thomas J. Neilan.

25. He admits that he signed the Meisner November 18 letter and the Meisner November 18 letter enclosure on or about the date they bear and promptly forwarded the same together by pre-paid United States mail to the addressee.

26. He denies Request 26. However he admits that the Meisner November 18 letter, the Meisner November 18 letter enclosure and the Neilan November 12 letter are writings which evidence the purported agreement he alleges was made in paragraph 5 of the first and second counts of his amended complaint, agreeably with his answers to defendant Reliance Steel's first interrogatories numbered 28, 29 and 30. [81]

\* \* \*

30. That no agreement relative to who constituted the key personnel referred to in the purported sale agreement was ever reached between Myron Hokin and Reliance Steel or Thomas J. Neilan.

31. That no agreement relative to the form of the key personnel employment agreement, as contemplated by the purported sale agreement, was ever reached between Myron Hokin and Reliance Steel or Thomas J. Neilan.

32. That no draft of any proposed employment agreement was at any time submitted by Myron Hokin or his representatives to Reliance Steel or to any of its officers or employees. [82]

\* \* \*

Dated October 31st, 1958.

Respectfully submitted,

/s/ HARRY H. MEISNER,

Plaintiff, Appearing in Pro-  
pria Persona.

Affidavit of service by mail attached.

[Endorsed]: Filed November 3, 1958. [85]

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[Title of District Court and Cause.]

PLAINTIFF'S ANSWERS TO  
SECOND INTERROGATORIES

State of Michigan,  
County of Wayne—ss.

Harry H. Meisner, being duly sworn, answers  
Defendant's Second Interrogatories as follows:

\* \* \*

4. Mr. Moore informed Meisner in July 11, 1957,  
telephone conversation that Mr. Gimbel, executive  
of the steel company, would call for appointment in  
a week.

\* \* \*

18. Not Applicable.

\* \* \*

22. Not Applicable.

28-30. Questions 28 to 30, inclusive, are objected  
to as immaterial hereto. [89]

\* \* \*



33. He knows of no specific date upon which Defendants so refused.

34-35. He is unable to answer questions 34 and 35 for lack of information.

\* \* \*

/s/ HARRY H. MEISNER.

Subscribed and sworn to before the undersigned at Detroit, Michigan, on October 31st, 1958.

[Seal]      /s/ JOAN A. DUBOISE,  
Notary Public, Wayne  
County, Michigan.

My commission expires March 19th, 1961.

Affidavit of service by mail attached.

[Endorsed]: Filed November 3, 1958. [90]

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[Title of District Court and Cause.]

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Defendants Reliance Steel & Aluminum Co. and Security-First National Bank, as Executor of the Will of Thomas J. Neilan, deceased, in response to the first request for admissions served by mail upon them by plaintiff on October 29, 1958, make the following statements:



Request No. 1: That on or about August 15, 1957, the Defendant, Reliance Steel & Aluminum Co., by Thomas J. Neilan, as its President and Chairman of the Board, made a proposal to sell and lease to Myron Hokin or his designee property as described and on terms contained [93] in the letter, of which a copy is hereto attached as exhibit numbered one (1), which was mailed to Myron Hokin on said date, and received by said Hokin shortly thereafter.

Response to Request No. 1: Defendants admit that on or about August 15, 1957, defendant Reliance Steel & Aluminum Co. made a proposal to sell and lease to Myron Hokin or his designee the property described in the letter, marked Exhibit "One," attached hereto and incorporated by reference herein, for the purchase price and rental payments and on the terms and subject to the conditions therein set forth; further admit that the addressee of such letter, said Myron Hokin, received the same on or about said date.

Request No. 2: That the Defendant, Reliance Steel & Aluminum Co., and Thomas J. Neilan individually were then willing and agreeable to sell such assets upon the terms specified in said letter of August 15, 1957, exhibit one (1).

Response to Request No. 2: Defendants admit that on or about August 15, 1957, defendant Reliance Steel & Aluminum Co. was willing to sell and lease the property described in said Exhibit "One" for the purchase price and rental payments and on the terms and subject to the conditions

therein set forth; further admit that Thomas J. Neilan was then willing that defendant Reliance Steel & Aluminum Co. sell and lease said property for such price and rental payments and on such terms and subject to such conditions.

Request No. 3: That on or about June 11, 1958, the Plaintiff presented his verified creditor's claim, containing the substance of the complaint filed in this cause, upon Security-First National Bank of Los Angeles, [94] as Executor of the Estate of Thomas J. Neilan, and one of the Defendants, herein, but that the same was rejected by said Executor on June 30, 1950, and by notice of rejection of claim dated July 2, 1958, and mailed to Plaintiff herein.

Response to Request No. 3: Defendants admit that on June 11, 1958, plaintiff presented his verified creditor's claim to defendant Security-First National Bank, as Executor of the Will of Thomas J. Neilan, deceased; further admit that said creditor's claim consisted of a printed form of claim provided for use in the Superior Court of the State of California in and for the County of Los Angeles to which was attached a copy of plaintiff's original complaint filed herein on June 2, 1958; further admit that said Executor rejected said claim on June 30, 1958; further admit that notice of rejection of said claim was duly given to plaintiff on July 2, 1958.

Request No. 4: That on September 30, 1957, and on October 2, 1957, the Defendant, Reliance Steel

& Aluminum Co., and Thomas J. Neilan, individually, as principal stockholder of Reliance Steel & Aluminum Co., were willing to sell the property described in the offer to purchase and the rider thereto described in and made Exhibit B to Defendants' First Request for Admissions.

Response to Request No. 4: Defendants admit that on September 30, 1957, and on October 2, 1957, defendant Reliance Steel & Aluminum Co. was willing to sell and lease the property described in said Exhibit "B" (attached to the first request for admissions served by defendant Reliance Steel & Aluminum Co. on plaintiff on August 4, 1953) for a purchase price and rental payments and on the terms and subject to the conditions therein set forth; further admit that Thomas J. Neilan [95] was then willing that defendant Reliance Steel & Aluminum Co. sell said property for such price and rental payments and on such terms and subject to such conditions; deny that said Thomas J. Neilan was then the principal shareholder of defendant Reliance Steel & Aluminum Co. but admit that he indirectly controlled a majority of its shares.

Request No. 5: That the signatures of Thomas J. Neilan (a) as President and Chairman of the Board of Reliance Steel & Aluminum Co., on page 3 of said Exhibit B described in the foregoing paragraph 4(b) individually, as principal stockholder of Reliance Steel & Aluminum Co., also on page 3

thereof, and (c) on the rider attached to said Exhibit B, were in fact the genuine signatures of said Thomas J. Neilan, and that he was duly authorized to make such signatures (a) and (c) and to execute said instruments for and on behalf of Reliance Steel & Aluminum Co.

Response to Request No. 5: Defendants admit the truth of the matter set forth in request No. 5.

Request No. 6: That Myron Hokin and the H. W. & G. Corporation as his designee were on October 2, 1957, ready, willing and able to perform the obligation of the purchaser or purchasers under said Exhibit B referred to in the two preceding paragraphs, 4 and 5.

Response to Request No. 6: Defendants cannot truthfully admit or deny that Myron Hokin or H. W. & G. Corporation was, on or about October 2, 1957, ready, willing or able to purchase the property described in the aforesaid Exhibit "B," for the price and on the terms and subject to the conditions therein set forth, for the reason that defendants have no knowledge of the intent or financial ability of said Myron Hokin or [96] said H. W. & G. Corporation or, for that matter, of even the juridical existence of said H. W. & G. Corporation; deny that said Exhibit "B" imposed any obligation upon said Myron Hokin, H. W. & G. Corporation, Thomas J. Neilan, or defendant Reliance Steel & Aluminum Co.

Request No. 7: That the Defendants have not at

any time performed the obligations imposed upon the Defendants and upon Thomas J. Neilan during his lifetime by said offer to purchase and rider Exhibit B described in paragraph 3 hereof.

Response to Request No. 7: Defendants deny that said Exhibit "B" imposed any obligation upon defendant Reliance Steel & Aluminum Co. or upon Thomas J. Neilan in his lifetime or upon defendant Security-First National Bank, as Executor of the Will of Thomas J. Neilan, deceased.

Request No. 8: That the Defendants have in their possession an original copy or copies of the August 15, 1957 letter to Hokin.

Response to Request No. 8: Defendants admit that they have in their possession a copy of the aforesaid August 15, 1957, letter, Exhibit "One" attached hereto.

Request No. 9: If answer to (8) is yes, please attach copy thereof to your admissions.

Response to Request No. 9: Defendants have attached a true copy of the aforesaid August 15, 1957, letter as Exhibit "One" hereto.

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attys. for Defendants. [97]



## EXHIBIT NO. 1

August 15, 1957.

Mr. Myron Hokin,  
600 West 41st Street,  
Chicago, Illinois.

Dear Mr. Hokin:

This will confirm our proposal to you (that is, the proposal of Reliance Steel and Aluminum Company, herein called "Reliance" and Thomas J. Neilan undersigned as its principal stockholder) to sell and to lease to you (or to your designee) the following described assets and properties of Reliance upon the indicated terms:

1. Reliance will sell its following described assets for the indicated prices:

(a) All of its inventories at a price equal to: (i) the book value of inventories (book value means lower of cost or market, determined on the same basis as that followed in prior periods), plus (ii) the sum of \$400,000.

(b) All machinery and equipment, autos and trucks, and office furniture and fixtures at a price of \$300,000.

(c) Deferred Assets at a price equal to the book value thereof.

(d) All catalogs, customers' lists, sales and purchase records, name, goodwill and similar assets for \$3,000.



2. The land and building located at 2600 East 26th Street, Vernon, California, shall be leased upon the following terms:

(a) Term of ten years.

(b) Gross rental of \$69,500 per year, payable monthly.

(c) Landlord to pay city and county real estate taxes and fire and extended insurance coverage. Tenant to maintain premises in clean condition and in good repair, ordinary wear and tear and damage by fire or the elements excepted, unless caused by the negligence of the tenant. Lessor shall pay for replacements and repairs made necessary by ordinary wear and tear and damage by the elements, except when caused by the negligence of the tenant. Tenant to pay any increase in city and county real estate taxes over the amount thereof for 1957.

(d) Tenant has option to purchase land and building for total price of \$600,000 at any time during the first ten year period. [98]

3. Reliance will get ten year extension of existing lease covering 37th Street property, including crane therein, the rental for the additional period beginning January 15, 1960, of not more than \$25,000 per year. Such lease as extended will be either assigned to you or a sublease will be given to you. You shall pay rental payable thereunder.

4. Reliance will lease to you for ten years its building and two cranes therein, located at 37th

Street leased property, for a gross rental of \$7,200 per year. Tenant shall have option to purchase Reliance's building and two cranes therein at any time during the term of such lease for \$58,000.

5. Thomas J. Neilan will agree not to compete in the State of California for a period of five years.

6. The consummation of this sale and lease is to be conditioned upon all of the following:

(a) Approval by Kaiser Aluminum and by Dow Chemical of this transaction, and their approval and agreement to continue present consignment and distributorship agreements with the purchaser.

(b) Complete physical inventory and audit by Kaiser and Dow of consignment inventories.

(c) Physical inventory of purchased inventories referred to in Paragraph 1 (a).

(d) Present key personnel to enter into mutually satisfactory employment agreements with the purchaser.

If you find this proposal satisfactory a mutually agreeable contract and escrow will be entered into, which will provide for the deposit by the purchaser of \$250,000.

This proposal shall be acted upon by you within ten days from date.

Very truly yours,

RELIANCE STEEL &  
ALUMINUM CO.

By THOMAS J. NEILAN,  
President and Chairman of  
the Board.

BH:b

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed November 10, 1958. [99]

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[Title of District Court and Cause.]

## MEMORANDUM OF CONTENTIONS OF FACT AND LAW

### Concise Statement of Material Facts

1. Jurisdiction of the district court is founded upon diversity of citizenship and an amount in controversy which exceeds, exclusive of interest and costs, the sum of \$3,000.00.

2. Plaintiff is a citizen of the State of Michigan and a lawyer admitted to practice and practicing law in that State.

3. Defendant Reliance Steel & Aluminum Co. (hereinafter called "Reliance Steel") is a corporation organized and existing under the laws of the State of California and principally engaged [102] in the business of jobbing fabricated steel and aluminum.

4. Defendant Security-First National Bank (hereinafter called the "Bank") is a national bank-

ing association organized and existing under the laws of the United States of America and having its principal place of business in the State of California. The Bank is sued in its capacity as executor of the will of Thomas J. Neilan (hereinafter called "Neilan"), who died November 17, 1957. In his lifetime, Neilan was the president and one of the directors, and indirectly controlled a majority of the shares of the issued and outstanding capital stock, of Reliance Steel. The Bank is the duly appointed, qualified and acting executor of Neilan's will in probate proceedings now pending in the Superior Court of the State of California in and for the County of Los Angeles (L. A. Superior Court No. 397,909).

5. On or about April 4, 1958, plaintiff first learned from an advertisement in the April 2, 1957, edition of the Wall Street Journal that a West Coast steel jobbing business was for sale. The text of the advertisement is as follows:

"Steeling Warehouse

"Business for Sale.

"Old Established West Coast Steel Jobber.

"56 Sales—\$13,125,000.

"Profit After Taxes—\$717,000.

"Book Value—\$2,500,000.

"Will take \$3,400,000 or accept exchange of stock in reliable company.

“Principals only.

“Box CQ-12, The Wall Street Journal, 711 W. Monroe Street, Chicago 6, Illinois.” [103]

6. On or about April 8, 1957, plaintiff made letter inquiry to the box number expressing interest in purchase of the business. On or about April 12, 1957, the anonymous advertiser replied by letter enclosing limited financial data relative to Reliance Steel and identifying himself as one Jack Moore (hereinafter called “Moore”). Moore did not disclose the identity of the business, its form of structure, the principals involved or his relationship to the business. A desultory correspondence between Moore and plaintiff ensued. Neither party made disclosure of the identity of the entities he represented.

7. On or about June 15, 1957, Moore advised Neilan of the interest of plaintiff’s client in the purchase of the business of Reliance Steel. Neilan thereupon instructed one of the officers of Reliance Steel, William T. Gimbel (hereinafter called “Gimbel”) to contact plaintiff to determine the identity of the principals that plaintiff represented and to obtain a more precise idea of their interest. Neilan thereafter advised Moore of his instructions to Gimbel.

8. On or about July 11, 1957, Moore disclosed the identity of the business to plaintiff by telephone. He advised plaintiff of Gimbel’s imminent arrival



in Chicago on the business of Reliance Steel. Plaintiff invited a conference with Gimbel.

9. On July 20, 1957, Gimbel visited plaintiff in plaintiff's law offices in Detroit. Plaintiff refused to divulge his client's identity without first obtaining Reliance Steel's written commitment that he, plaintiff, would be entitled to a broker's commission in the event of consummation of a sale of the business of Reliance Steel on terms satisfactory to it. Gimbel advised plaintiff that, in the event of the consummation of a sale of the business on terms satisfactory to Reliance Steel to purchasers produced by [104] plaintiff, any commission compensation would be paid Moore, not plaintiff. Gimbel further advised plaintiff that Moore had no financial interest in Reliance Steel, that invitations for offers to purchase the business of Reliance Steel had been made to persons other than Moore, and that Moore had no exclusive broker's agreement nor any agreement with Reliance Steel but only an informal arrangement with Neilan respecting commissions.

10. On July 21, 1957, plaintiff telephoned Moore to obtain a commission participation commitment. Moore represented to plaintiff that he had an agreement with Reliance Steel whereby he, Moore, would receive a sales commission of 5% of the first million dollars plus  $2\frac{1}{2}\%$  of the balance of the purchase price for the stock, assets or business of Reliance Steel if and when such a sale were consummated. In the course of the telephone con-



versation, plaintiff and Moore reached an agreement whereby Moore promised plaintiff one-half the total sales commission realized by Moore from the sale of the stock, assets or business of Reliance Steel if plaintiff were responsible for the consummation of such sale. That agreement was confirmed by an exchange of letters between Moore and plaintiff.

11. Believing himself assured of participation in a sales commission by his agreement with Moore, plaintiff wrote Moore a July 29, 1957, letter, copy to Gimbel, disclosing the names of the persons he claimed to be prospective purchasers. On or about July 30, 1957, Gimbel wrote plaintiff a letter confirming his July 20 conversation with plaintiff and relating that Moore had the opportunity to locate an acceptable buyer for the business of Reliance Steel under an informal agreement whereby Moore would receive a fee commensurate with his efforts.

12. On or about August 5, 1958, a representative or [105] associate of Myron Hokin, one of the persons proposed by plaintiff as interested in the purchase, arrived in Los Angeles to visit the premises where plaintiff's business was conducted. Thereafter and on or about August 12, 1957, plaintiff and Myron Hokin and several of Hokin's associates came to Los Angeles to open negotiations for the purchase of the business on a cash basis. Hokin could not raise sufficient cash to meet Reliance Steel's price of approximately \$3,750,000.00 for the assets of the corporation. Reliance Steel was will-

ing to retain some of its assets and to lease the same to the purchaser; the purchase price would thereby be reduced to about \$3,200,000.00. An outline of Reliance Steel's proposal was embodied in its August 15, 1957, letter to Hokin.

13. On or about August 27, 1957, Hokin and his associates again came to Los Angeles accompanied by a Mr. Haase, a Vice-President of First National Bank of Chicago, the financing agency in the transaction. After extended discussion with Reliance Steel, Hokin withdrew from the negotiations because the parties were unable to agree on the purchase price and other material terms of the sale.

14. In September, 1957, plaintiff made effort to revive the deal. Plaintiff procured from Hokin in Chicago:

a. Hokin's September 30, 1957, letter addressed to Reliance Steel setting forth a conditional offer to purchase the therein identified assets of the corporation;

b. Hokin's September 30, 1957, letter to Paul D. Dodds, a Vice-President of the Bank, enclosing a copy of the above conditional offer and notifying the Bank of his intention to open an escrow "subject to the parties' entering into a mutually satisfactory contract";

c. A cashier's check drawn in favor of the Bank by The First National Bank of Chicago in the sum of \$250,000.00. [106]

15. Plaintiff enplaned for California armed with the check and letters. On behalf of Hokin, he presented the proposal to Reliance Steel in Los Angeles. Further negotiations with Reliance Steel were pursued in that City by plaintiff. In an effort to induce Reliance Steel to sell the assets identified in Hokin's September 30, 1957, letter, at the reduced price therein provided for, plaintiff stated he would forego one-half of the share of the total sales commission to which he would be entitled under his agreement with Moore, thus reducing the total sales commission payable by Reliance Steel in the event a sale were consummated. As a result of the negotiations in Los Angeles and the plaintiff's representation relative to his share of the commission, Reliance Steel and Neilan endorsed the Hokin September 30, 1957, letter after first preparing and attaching thereto a rider bearing date October 2, 1957. Plaintiff left the Hokin letter to Dodds and the \$250,000.00 cashier's check with Neilan and returned to Chicago to obtain Hokin's approval of the October 2, 1957, rider. Plaintiff obtained the approval of Hokin in Chicago and dispatched the approved rider to Neilan by mail, together with instructions to present the cashier's check and the Hokin letter to Dodds at the Bank. Neilan complied.

16. Thereafter the parties, through their respective counsel, endeavored to work out and agree upon a formal written contract. The initial draft of the contract was prepared by Chicago counsel for

Hokin. This draft was not acceptable to Reliance Steel or Neilan or their counsel. Hokin then employed Los Angeles counsel who prepared a second draft. At about the same time as the preparation of the second draft, Los Angeles counsel for Hokin prepared a draft of escrow instructions, a draft of supplemental escrow instructions and a draft of the lease referred to in the September 30, 1957, letter and the October 2, 1957, rider attached thereto. [107] None of these drafts was acceptable to Reliance Steel or Neilan or their counsel. The latter thereupon prepared a draft of the formal written contract of purchase and sale, but this draft was unacceptable to counsel for Hokin in divers respects as specified in a November 1, 1957, letter addressed by Chicago counsel for Hokin to counsel for Reliance Steel. Reliance Steel thereupon employed additional counsel to prepare yet another draft of the formal written contract. Such draft was completed and transmitted to counsel for Hokin about November 12, 1957. No written response respecting that draft was ever made by Hokin, his nominee or anyone acting on their behalf.

17. Meanwhile, Neilan dispatched a November 12, 1957, letter to plaintiff. Enclosed therewith was a form of letter for plaintiff's execution providing for direct payment of a sales commission to plaintiff by Reliance Steel if and when a formal contract of purchase and sale were executed and the sale consummated and provided that plaintiff

would forego one-half of the commission to which he would be otherwise entitled under his agreement with Moore. Plaintiff did not execute the Neilan November 12 letter enclosure. Instead, on November 18, 1957, plaintiff wrote Neilan enclosing a letter bearing the same date wherein he offered to accept a flat fee of \$30,000.00 payable directly to him on the close of escrow if and when a formal purchase and sale agreement were executed and the sale consummated. Neilan died November 17, 1957, prior to the dispatch of plaintiff's letter offer. [108]

Dated this 19th day of November, 1958.

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendants Reliance Steel & Aluminum Co. and Security-First National Bank, as  
Executor, etc.

Affidavit of service by mail attached.

[Endorsed]: Filed November 19, 1958.



[Title of District Court and Cause.]

NOTICE OF MOTION FOR  
SUMMARY JUDGMENT  
(Rule 56, F.R.C.P.)

To the Plaintiff Above Named:

You will please take notice that on Monday, the 8th day of December, 1958, at 9:30 a.m., or as soon thereafter as the matter can be heard, in Court Room No. 2 at the United States Court House in the City and County of Los Angeles, State of California, defendant Reliance Steel & Aluminum Co. (hereinafter called "Reliance Steel") and defendant Security-First National Bank (hereinafter called the "Bank"), as Executor of the Will of Thomas J. Neilan (hereinafter called "Neilan"), deceased, will move the court for an order, pursuant to Rule 56 of the Federal Rules of Civil Procedure, directing the [127] entry of summary judgment in favor of said defendants upon each of the following grounds:

1. There is no genuine issue as to any material fact to be tried or determined herein.

2. Jack Moore is an indispensably necessary party to a full and final adjudication of this action and he has not been made a party hereto.

3. The only contract of employment to which plaintiff was hired in connection with the purchase and sale of the assets or the capital stock of Reliance Steel was one between him and Jack Moore.



Neither Neilan in his lifetime, the Bank as such Executor nor Reliance Steel was ever a party to a contract of employment with plaintiff, or with plaintiff and Jack Moore.

4. The consummation of a purchase and sale of the assets or the capital stock of Reliance Steel was, under the contract alleged by plaintiff, a condition precedent to liability for broker's commissions. No such purchase and sale was ever consummated and no valid and enforceable contract of purchase and sale was ever made.

5. Plaintiff unlawfully participated in the negotiations conducted within the State of California for a contract covering the purchase and sale of the assets of Reliance Steel and is thereby barred from recovery of a broker's commission even had he been employed by Reliance Steel and Neilan, or either of them, so to do and even had a purchase and sale been consummated or an enforceable contract of purchase and sale been made.

The Bank as such Executor moves for an order directing the entry of summary judgment in its favor on the further grounds as follows: [128]

6. This action was prematurely commenced against the Bank as such executor for the reason that no creditor's claim was first presented to it or filed with clerk of the court in which the proceedings relative to Neilan's estate were pending.

7. The creditor's claim presented by plaintiff to the Bank as such Executor subsequent to the

commencement of this action was rejected in its entirety and no action was commenced thereon in the manner and within the time provided by law.

Said motion will be based upon this notice, upon the summary statement of pleadings, jurisdictional facts and plaintiff's admissions and answers to interrogatories attached hereto and made a part hereof, upon the affidavit of William T. Gimbel attached hereto and made a part hereof, upon the memorandum of points and authorities attached hereto and in support hereof and upon all the pleadings, records and files herein.

Dated this 28th day of November, 1958.

LAWLER, FELIX & HALL,  
WILLIAM T. COFFIN,  
ROBERT HENIGSON,

By /s/ ROBERT HENIGSON,  
Attorneys for Defendants.

Summary Statement of Pleadings, Jurisdictional  
Facts and Plaintiff's Admissions and Answers  
to Interrogatories

1. Jurisdiction of the court; the parties to the action. Jurisdiction of the court is founded upon diversity of citizenship and an amount in controversy which exceeds, exclusive of interest and costs, the sum of \$3,000.00. Plaintiff is a citizen of the State of Michigan. Defendant Reliance Steel & Aluminum Co. (hereinafter called "Reliance Steel")

is a corporation organized and existing under the laws of the State of California. Defendant Security-First National Bank (hereinafter called the "Bank") is a national banking association organized and existing under the laws of the United States of America, having its principal place of business in the State of California. The Bank is sued in its capacity as Executor of the Will of Thomas J. Neilan (hereinafter called "Neilan"), who died November 17, 1957. In his lifetime, Neilan was the president and one of the directors, and indirectly controlled a majority of the shares of the issued and outstanding capital stock, of Reliance Steel. The Bank is the duly appointed, qualified and acting Executor of Neilan's Will in probate proceedings now pending in the Superior Court of the State of California in and for the County of Los Angeles (L. A. Superior Court No. 397,909).

2. The alleged employment agreement. Paragraph 4 of the first and second counts of plaintiff's amended complaint alleges that Reliance Steel and Neilan employed plaintiff and Jack Moore "by various instruments in writing \* \* \* to find a purchaser ready, willing and able to purchase \* \* \*" the assets or capital stock [130] of Reliance Steel on terms mutually acceptable to buyer and seller. Paragraph 5 of the first and second counts of plaintiff's amended complaint alleges that a subsequent agreement was made between the parties providing that one-half the commission payable should be paid directly to plaintiff and the other half to Jack Moore.

In response to the following interrogatories served upon plaintiff by Reliance Steel:

“27. Identify by date and signatory or signatories all the ‘various instruments in writing’ referred to in paragraph 4 of the first and second counts of the complaint and state of which such instruments you have a copy or the original.

“28. When was the agreement referred to in paragraph 5 of the first and second counts of the complaint made?”

plaintiff answered under oath:

“27. Instruments in writing.

a. July 30, 1957, Letter Gimbel to Meisner on Reliance letterhead.

b. Oct. 7, 1957, Letter Neilan to Meisner on Reliance letterhead.

c. Nov. 12, 1957, Letter Neilan to Meisner on plain paper, but signed as President, Reliance Steel.

“28. By letters November 12, 1957, and November 18, 1957.” In response to Reliance Steel’s second request for admissions served upon plaintiff, plaintiff admitted that the photostats marked, respectively, Exhibits “E,” “G,” “H” and “K,” copies of which are attached hereto, are true copies of the letters referred to in plaintiff’s above answers.

Defendants submit that none of these letters evidence an [131] employment agreement between Neilan and Reliance Steel, or either of them, and plaintiff.

In response to Reliance Steel's second request for admissions Nos. 4 to 11, inclusive, as follows:

"4. Admit that Jack Moore represented to you by telephone July 21, 1957, that he had an agreement with Reliance Steel whereby he would receive a sales commission of 5% of the first \$1,000,000 plus 2½% of the balance of the sale price for the business of Reliance Steel if and when such a sale were consummated.

"5. Admit that you reached an agreement with Jack Moore during the aforesaid July 21, 1957, telephone conversation between you and him whereby Moore promised to pay you one-half of the total sales commission he received on account of the sale of the business of Reliance Steel if you were responsible for the consummation of such sale.

"6. Admit that the photostat, marked Exhibit 'C,' attached hereto and exhibited herewith is a true copy of a letter of Jack Moore dated July 21, 1957 (hereinafter called the 'Moore July 21 letter'), to you.

"7. Admit that the Moore July 21 letter was executed on or about the date that it bears by Jack Moore and that you thereafter received the same on or about July 25 in the ordinary course of the United States mail.

"8. Admit that the photostat, marked Exhibit 'D,' attached hereto and exhibited herewith, is a true copy of a letter from you dated July 25, 1957 (here-



inafter called the 'Meisner July 25 letter'), to Jack Moore.

"9. Admit that the Meisner July 25 letter was signed by you on or about the date that it bears and was thereupon [132] deposited in the United States mail in an envelope addressed to Jack Moore with postage fully prepaid.

"10. Admit that the terms of your employment agreement made July 21, 1957, with Jack Moore are fully set forth in the Moore July 21 letter and the Meisner July 25 letter.

"11. Admit that the employment agreement made July 21, 1957, between you and Jack Moore was the only employment agreement ever reached by you on or before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel.",

plaintiff admitted under oath the truth of the matters set forth in said requests Nos. 6 to 9, inclusive, and responded to requests Nos. 4, 5, 10 and 11 as follows:

"4. He denies Request No. 4. However he admits that Jack Moore represented to him by telephone July 21, 1957, that he had an agreement with Reliance Steel whereby he would receive a sales commission of 5% of the first \$1,000,000 plus 2½% of the balance of the sale price for the stock, assets or business of Reliance Steel if and when such a sale were consummated."



“5. He denies Request No. 5. However he admits that he reached an agreement with Jack Moore during the aforesaid July 21, 1957, telephone conversation between Moore and him whereby Moore promised that Plaintiff would receive one-half of the total sales commission from the sale of the stock, assets or business of Reliance Steel if he should be responsible for the consummation of such sale.”

“10. He denies the 10th Request. However he admits that the terms of the agreement made July 21, 1957, with [133] Jack Moore are set forth in the Moore July 21 letter and the Meisner July 25 letter.

“11. He denies the 11th Request. However he admits that the agreement made July 21, 1957, between him and Jack Moore was the agreement reached between him and Moore on or before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel.”

In answer to No. 18 of Reliance Steel's second set of interrogatories served on plaintiff, as follows:

“18. If your response to number 11 of this defendant's second request for admissions is a denial, set forth the terms of each of the alleged employment agreements made by you before November 12, 1957, in connection with the sale of the assets or the capital stock of Reliance Steel, state when, with whom and in whose presence each such employment agreement was made and identify which of such alleged employment agreements, if any, are evidenced by a writing.”,

plaintiff replied under oath “Not Applicable.”

Defendants submit that plaintiff's refusal to set forth the making or the terms of any other employment agreement but the one evidenced by Exhibits "C" and "D," copies of which are attached hereto, is a tacit admission that none other exists. Plaintiff's employment agreement in connection with the sale of the assets or capital stock of Reliance Steel, if any such agreement exists at all, is one between Jack Moore and plaintiff, not between Reliance Steel and Neilan, or either of them, and plaintiff. Jack Moore is, therefore, an indispensable party to a final adjudication of this action.

Even were plaintiff able to establish the joint agreement alleged in paragraph 4 of the first and second counts of his amended [134] complaint (and his answers and admissions refute such possibility), Jack Moore remains an indispensable party to this action. By alleging the making of a subsequent agreement whereby he became entitled to direct payment of one-half the commissions payable on consummation of a sale, plaintiff seeks to avoid the impact of the jurisdictional requirements that indispensable parties must be joined. The subsequent agreement was made according to plaintiff (See answer No. 28, *supra*) by an exchange of letters between him and Neilan dated, respectively, November 12 and 18, 1957.

Responsive to Reliance Steel's second request for admissions served upon plaintiff, Nos. 18 and 19, 23 and 24, as follows:

“18. Admit that the photostat, marked Exhibit ‘H,’ attached hereto and exhibited herewith, is a true copy of a letter from Thomas J. Neilan dated November 12, 1957 (hereinafter called the ‘Neilan November 12 letter’).

“19. Admit that the plain copy, marked Exhibit ‘J,’ attached hereto and exhibited herewith, is a true copy of the enclosure (hereinafter called the ‘Neilan November 12 letter enclosure’) identified in the Neilan November 12 letter as ‘the enclosed letter’.”

“23. Admit that the photostat, marked Exhibit ‘K,’ attached hereto and exhibited herewith, is a true copy of a letter from you dated November 18, 1957 (hereinafter called the ‘Meisner November 18 letter’), to Thomas J. Neilan.

“24. Admit that the photostat, marked Exhibit ‘L,’ attached hereto and exhibited herewith, is a true copy of a letter enclosure dated November 18, 1957 (hereinafter called the ‘Meisner November 18 letter enclosure’), signed by you on or about the date that it bears, addressed to Thomas J. Neilan.”, [135]

plaintiff admitted that said Exhibits “H,” “J,” “K” and “L,” copies of which are attached hereto, are the November 12 and 18, 1957, letters exchanged between him and Neilan and the therein mentioned enclosures.

Plaintiff has also admitted that he did not execute the Neilan November 12 letter enclosure (Exhibit

“L”),<sup>1</sup> which as a matter of law constituted an offer on the part of Neilan not accepted by plaintiff. Instead, plaintiff prepared and executed the Meisner November 18 letter and the Meisner November 18 letter enclosure on or about the date they bear and forwarded the same by United States mail to Neilan, the addressee.<sup>2</sup> The provisions of the Meisner November 18 letter enclosure are materially different than those of the Neilan November 12 letter enclosure; as a matter of law, plaintiff’s November 18 letter enclosure constituted a counter offer.

Neilan died November 17, 1957.<sup>3</sup> Therefore, there could have been no acceptance of plaintiff’s counter

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<sup>1</sup>Reliance Steel’s second request for admissions, No. 22:

“22. Admit that you never executed the Neilan November 12 letter enclosure.”

and plaintiff’s response thereto:

“22. He admits that he never executed the Neilan November 12 letter enclosure.”

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<sup>2</sup>Plaintiff’s response No. 25 to Reliance Steel’s second request for admissions is as follows:

“25. He admits that he signed the Meisner November 18 letter and the Meisner November 18 letter enclosure on or about the date they bear and promptly forwarded the same together by prepaid United States mail to the addressee.” [136]

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<sup>3</sup>Plaintiff’s response No. 1 to Reliance Steel’s second request for admissions is as follows:

“1. He admits that Thomas J. Neiland [sic] died on November 17, 1957.”

offer by Neilan, and there was no such acceptance by Reliance Steel.

3. The purported purchase and sale agreement.

Plaintiff contends that he performed the alleged employment agreement and became entitled to a commission on or about October 2, 1957.<sup>4</sup> The validity of that contention rests upon his further contention that the September 30, 1957, letter and October 2, 1957, rider attached thereto constitute a valid and enforceable purchase and sale contract between Reliance Steel, as seller, and Myron Hokin, as buyer.<sup>5</sup>

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<sup>4</sup>No. 45 of Reliance Steel's first set of interrogatories served upon plaintiff and plaintiff's answer thereto are as follows:

(Interrogatory.)

"45. State the date upon which you contend you completed your performance and were entitled to a commission."

(Answer.)

"45. On or about October 2, 1957, when Myron Hokin signed the rider described in (35)." [137]

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<sup>5</sup>See paragraph 6 of the first and second counts of plaintiff's original and amended complaints.

No. 35 of Reliance Steel's first set of interrogatories served on plaintiff and plaintiff's answer thereto are as follows:

(Interrogatory.)

"35. Identify by date and signatories the written agreement first referred to in paragraph 6 of the first and second counts of the complaint."



Further to support the latter contention, plaintiff alleges that a \$250,000.00 deposit on the purchase price was made.<sup>6</sup>

Reliance Steel's first interrogatories to plaintiff, Nos. 51 and 52 as follows:

"51. Was the deposit accompanied by written instructions regarding the disposition of the funds?

"52. If your answer to interrogatory number 51 is yes, identify the writing or writings by date and signatories and state of which such writings you have a copy or the original."

evoked plaintiff's answer:

"51 and 52. Yes in letter from Myron Hokin to [138] Paul D. Dodds, Senior Vice President of Security First National Bank dated on or about September 30, 1957."

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(Answer.)

"35. Agreement September 30, 1957, as amended signed by Myron Hokin and accepted subject to rider by Reliance Steel and Aluminum Company, by T. J. Neilan, its President and Chairman of the Board, and by Thomas J. Neilan, individually, as Principal Stockholder of Reliance Steel and Aluminum Company. The rider is stated to be approved October 2, 1957, and signed by Reliance Steel and Aluminum Company by Thomas J. Neilan and by Myron Hokin."

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<sup>6</sup>See paragraph 6 of the first and second counts of plaintiff's original and amended complaints.



Plaintiff next admitted the truth of the matters set forth in Reliance Steel's first request for admissions as follows:

"1. That the photostat, marked Exhibit 'A,' attached hereto and exhibited herewith is a true copy of a letter (hereinafter called 'said letter') of Myron Hokin dated September 30, 1957, to Mr. Paul D. Dodds, Senior Vice President, Security-First National Bank of Los Angeles;

"2. That the photostat, marked Exhibit 'B,' attached hereto and exhibited herewith, is a true copy of the enclosure (hereinafter called 'said enclosure') identified in said Exhibit 'A' as 'proposal submitted to Reliance Steel & Aluminum Company and Thomas J. Neilan';

"3. That said letter was executed on or about the date that it bears, viz., September 30, 1957, by said Myron Hokin;

"4. That said letter and said enclosure, together with a cashier's check payable to the order of Security-First National Bank of Los Angeles in the sum of \$250,000, were delivered to the addressee on or about October 3, 1957;

"5. That said \$250,000 check is the sum alleged in paragraph 6 of the first and second counts of plaintiff's amended complaint to be a deposit on the purchase price for the sale of certain assets of Reliance Steel & Aluminum Co. to Myron Hokin, individually and as agent for H. W. & G. Corporation;".

"7. That said enclosure, comprising four pages,

is a true copy of the instrument alleged in paragraph 6 of the [139] first and second counts of plaintiff's amended complaint to be the written agreement entered into between Myron Hokin, individually and as agent for H. W. & G. Corporation, and Reliance Steel & Aluminum Co. and Thomas J. Neilan;

"8. That said enclosure is a copy of the only purported agreement upon which plaintiff relies in his contention that he found a purchaser ready, willing and able to purchase or acquire the assets or the capital stock of Reliance Steel & Aluminum Co. on terms mutually agreeable to the prospective purchaser and to Reliance Steel & Aluminum Co. and Thomas J. Neilan."

Copies of Exhibits "A" and "B" attached to said request are attached hereto for the convenience of the court.

Reference to Exhibit "A" reveals that the \$250,000.00 check was not a deposit on the purchase price. The Bank was expressly instructed to hold the check "pending further directions" and pending the parties' entering into a mutually satisfactory contract and escrow agreement. Indeed, no escrow was to be opened, as the letter of instructions and as the "enclosed proposal" (Exhibit "B") itself provided, unless and until a mutually satisfactory contract was made.

By the letter of instructions (Exhibit "A"), the prospective buyer, Myron Hokin, clearly contem-

plated further negotiations to the end of consummating a mutually satisfactory contract. That letter aside, the purported sale agreement itself (Exhibit "B") constitutes nothing more than an agreement to agree. The provisions of the purported sale agreement are explicitly made nugatory unless and until a formal contract was executed by the parties. Further, consummation of the sale and lease of the property therein described [140] was expressly conditioned, *inter alia*, upon: (i) obtaining the approval of designated suppliers to Reliance Steel to continue their present consignment and distributorship agreements with the prospective purchaser; and, (ii) the execution by and between such prospective purchaser and the "present key personnel" of Reliance Steel of "mutually satisfactory employment agreements."

The purported sale agreement itself contemplates further negotiations. The October 2, 1957, rider provides in part that the prospective purchaser shall negotiate the procurement of the agreement and approval of said suppliers to continue their consignment and distributorship agreements. It also provides that the purchaser shall complete his negotiations with "present key personnel" relative to the consummation of mutually satisfactory employment agreements prior to the determination of the price of the assets contemplated to be sold. In addition, the rider explicitly calls for a "lease satisfactory to both parties as to form."

Either party, by the very terms of the undertak-

ing, could refuse to agree to anything to which the other party might agree. Under such conditions, any promise made is unenforceable. The purported sale agreement was not, therefore, a valid and enforceable contract. It being the only purported sale agreement upon which plaintiff relies in his contention that he performed his alleged employment agreement (see the admitted request No. 8, *supra*), plaintiff must fail in this action.

#### 4. Plaintiff's unlawful activity.

Plaintiff alleges in paragraph 4 of the first and second counts of his amended complaint that he was employed to find a purchaser for the assets or the capital stock of Reliance Steel on terms mutually acceptable to buyer and seller. The affidavit of [141] William T. Gimbel, attached hereto and in support hereof, reveals that plaintiff was actively engaged in California in the negotiations for the purchase and sale of the assets of Reliance Steel and, indeed, that plaintiff was primarily responsible for the execution by Neilan of the purported purchase and sale agreement (Exhibit "B").

Plaintiff is not now and never has been licensed as a real estate broker or salesman or as a business opportunity broker or salesman by the Real Estate Commissioner of the State of California.<sup>7</sup> Plaintiff's

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<sup>7</sup>Plaintiff answered in the negative each of the following interrogatories, comprising a part of Reliance Steel's first set of interrogatories served on plaintiff:

"57. Are you now or have you ever been licensed by the Real Estate Commissioner of the

activity in the State of California was, therefore, unlawful, and he is not under any circumstances entitled to compensation under the California substantive law.

5. Premature nature of the action against the Bank.

Plaintiff's complaint was filed with the court on June 2, 1958. No prior filing with the probate court of a creditor's claim against Neilan's estate and no prior presentation of the same to the Bank, as Executor of Neilan's will, is alleged. Absence of the allegation is not the result of inadvertence on the part of plaintiff. Paragraph 8 of the first and second counts of plaintiff's amended complaint alleges presentation to the Bank, as such Executor, of [142] plaintiff's claim against Neilan's estate on or about June 10, 1958. (The actual date of presentation was June 11, 1958). Under the California substantive law, no claim arose against the Bank until rejection by the Executor of the claim presented or inaction by the Executor for a period of ten days after presentment. Thus, no claim existed against the Bank at the time of the filing of plaintiff's [143] complaint.

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State of California as a real estate broker or salesman?"

"59. Are you now or have you ever been licensed by the Real Estate Commissioner of the State of California as a business opportunity broker or salesman?"



## EXHIBIT A

Copy

September 30, 1957.

Mr. Paul D. Dodds,  
Senior Vice President,  
Security-First National Bank  
of Los Angeles,  
Sixth and Spring Streets,  
P. O. Box 2097,  
Los Angeles, California.

Dear Mr. Dodds:

There is delivered to you herewith Cashier's Check No. E-482528 drawn on The First National Bank of Chicago, dated September 27, 1957, and payable to the order of your Bank, in the amount of \$250,000.

Enclosed you will please find copy of proposal submitted to Reliance Steel & Aluminum Company and Thomas J. Neilan, its principal stockholder, relating to the sale and lease of certain of its assets and property upon the terms set forth therein, which has been accepted and approved. The enclosed proposal provides for the creation of an escrow with your Bank in the event that the proposal is accepted within the term provided therein, and subject to the parties entering into a mutually satisfactory contract. The within check is to be held by you for deposit into said escrow with your Bank pending the parties entering into the said contract and escrow agreement.



We would appreciate your so retaining and holding the enclosed check pending further directions.

Very truly yours,

/s/ MYRON HOKIN. [144]

## EXHIBIT B

September 30, 1957.

Reliance Steel & Aluminum Company  
and Thomas J. Neilan, Its Principal  
Stockholder,  
Los Angeles, California.

Gentlemen :

The undersigned hereby offers to purchase from you and to lease from you the following described assets and properties of Reliance Steel & Aluminum Company (herein called "Reliance"), upon and subject to the following:

1. Reliance will sell its following described assets to the undersigned (or his designee) for the indicated prices:

(a) All of its inventories at a price equal to current replacement prices from the producers of said inventories from whom Reliance usually purchases the same, plus applicable freight, and based upon a physical count of such inventories. Inventory items of the size or specifications not normally purchased

from such producers (commonly known as "cut downs," and "drop offs" and "shorts") are to be priced at current market prices.

(b) All machinery and equipment, autos and trucks, and office furniture and fixtures at an aggregate price of \$300,000.

(c) Deferred assets at a price equal to the book value thereof.

(d) All catalogues, customers' lists, sales and purchase records, name, good-will and similar assets for \$3,000. [145]

2. Land and building located at 2600 East 26th Street, Vernon, California, shall be leased upon the following terms:

(a) Term of ten years.

(b) Gross rental of \$69,500 per year, payable monthly.

(c) Landlord to pay the City and County real estate taxes and the fire and extended insurance coverage. Tenant to maintain premises in clean condition and in good repair, ordinary wear and tear and damage by fire or the elements excepted, unless caused by the negligence of the tenant. Lessor shall pay for replacements and repairs made necessary by ordinary wear and tear and damage by the elements, except when caused by the negligence of the tenant. Tenant to pay any increase in City and County real estate taxes over the amount thereof for 1957.

(d) Tenant shall have the right at Tenant's cost to build additional bay to building, which bay shall

at expiration of the lease belong to Landlord, but said bay shall belong to Tenant during such time as lease shall be in effect. If Tenant builds such additional bay, then Tenant shall have the right to extend the lease for additional ten-year period at the same rental and upon same terms.

(e) Tenant has option to purchase land and building for total price of \$600,000 at any time during the first ten year period.

3. Reliance will obtain ten year extension of existing lease covering 37th Street property, including crane therein, the rental for the additional period beginning January 15, 1960, to be not more than \$25,000 per year. Such lease as extended will be either assigned to the undersigned (or his designee) or a sublease will be given to the undersigned or his designee. The undersigned shall pay the rental payable thereunder. [146]

4. Reliance will lease to the undersigned (or his designee) for a term of ten years its building and two cranes therein, located at 37th Street leased property, for a gross rental of \$7,200 per year, payable monthly. Tenant shall have option to purchase Reliance's building and two cranes therein at any time during the term of such lease for \$58,000.

5. Thomas J. Neilan will agree not to compete in the State of California for a period of five years.

6. The consummation of this sale and lease is to be conditioned upon all of the following:

(a) Approval by Kaiser Aluminum and Dow Chemical of this transaction, and their approval and agreement to continue present consignment and distributorship agreements with the undersigned or his designee.

(b) Complete physical inventory and audit by Kaiser Aluminum and Dow Chemical of consignment inventories.

(c) Physical count of purchased inventories and pricing thereof as provided in subparagraph 1(a).

(d) Present key personnel to enter into mutually satisfactory employment agreements with the purchaser.

If you find the within proposal acceptable, please indicate your acceptance on a copy hereof, and forthwith upon your acceptance a mutually agreeable contract and escrow shall be entered into (which escrow shall be entered into with the Security-First National Bank of Los Angeles, as Escrowee), covering the within transaction, and which will provide for the deposit by the purchaser of earnest money of \$250,000.

Very truly yours,

/s/ MYRON HOKIN.

The above proposal is approved and accepted subject to 1-page rider attached:

RELIANCE STEEL &  
ALUMINUM COMPANY,

By /s/ T. J. NEILAN,

Its President and Chairman  
of the Board.

/s/ THOMAS J. NEILAN,

Individually, as Principal Stockholder of Reliance  
Steel & Aluminum Company. [147]

Rider—To Be Attached to and Become a Part of  
Letter Offer of Mr. Myron Hokin Dated Sep-  
tember 30, 1957.

Par. 1(a)—Page 1—“All of its inventories \* \* \*”  
shall include goods in transit.

Par. 1(b)—Page 1—After \$300,000.00 add: “plus  
actual cost of any new equipment now on order and  
received after Oct. 1, 1957”—Consisting of 1 truck  
and miscellaneous shop equipment estimated not to  
exceed \$10,000.00.

Par. 2—Page 2—should read: “Land and building  
located at 2600 East 26th Street, Vernon, Califor-  
nia, shall be leased upon the following general terms,  
on a form of lease similar to the existing lease on the  
premises on East 37th Street, per copy attached.”

Par. 2(c)—Strike: “Lessor shall pay for replace-  
ments and repairs made necessary by ordinary wear  
and tear and damage by the elements, except when  
caused by the negligence of the tenant.”

Par. 2(d)—after “Landlord” in 4th line, substi-  
tute “unless option to purchase is exercised under  
Par. 2(e).



Par. 6—Page 3: (a) in second line strike “of this transaction”;

Par. 6—Page 3: (c) Add: “The formal ‘mutually agreeable contract’ shall contain an arbitration clause providing for arbitration of any dispute under the contract.”

The letter offer of September 30, 1957, and the terms in this rider shall be of no force or effect unless formally accepted and approved on or before October .., 1957, and a formal contract shall be executed by the parties on or before October .., 1957.

Before taking inventories as provided in Paragraphs 6(b) and 6(c) purchaser shall complete his negotiations under 6(a) and 6(d), a lease satisfactory to both parties as to form shall be drafted, and an extension of the lease on the 37th Street premises shall be obtained by seller.

Rider Approved: Oct. 2, 1957: (Attach to Letter offer 9/30/57).

RELIANCE STEEL &  
ALUMINUM CO.

By /s/ THOMAS J. NEILAN.

/s/ MYRON HOKIN. [148]

EXHIBIT C

The Sands Hotel  
3320 East Van Buren, Phoenix, Arizona

July 21, 1957.

Dear Mr. Meisner:

Confirming today's phone conversation. I promise to pay you fifty per cent (50%) of the selling commission that I will receive, providing that you are responsible for the consumation of the sale of Reliance Steel & Aluminum Co. of Los Angeles. Naturally, the sale has to be agreeable to the buyer & seller.

Yours truly,

/s/ JACK MOORE. [149]

[Second page of Exhibit C.]

The Sands Hotel  
3320 East Van Buren, Phoenix, Arizona

It may be that you might be interested in selling this company for more than the asking price, in which case it could be arranged so that you would receive a two-thirds portion of all that is received over the asking price—this is not a firm commitment but just a thought—if and when you might be interested then we will come to an agreement.

[No signature.] [150]

## EXHIBIT D

(Copy)

July 25, 1957.

Jack Moore, Esq.,  
The Sands Hotel,  
3320 East Van Buren,  
Phoenix, Arizona.

Dear Mr. Moore:

I am in receipt of your letter of July 21st confirming our fee arrangement which is an equal division between us of the total commissions to be received from the Reliance Steel and Aluminum Company of Los Angeles upon the completion of a deal initiated and concluded by me.

Next week I am conferring with corporations who are interested in the acquisition of Reliance and you may be assured that the moment I reach a point where I feel that there is a genuine indication of effecting a mutually satisfactory deal you will be promptly notified. Meanwhile, I want to thank you for your co-operation in this matter.

Sincerely,

HHM.dvi

Air Mail [151]

EXHIBIT E

Reliance Steel & Aluminum Co.

Aluminum, Steel, Magnesium

2068 East 37th Street

Los Angeles 58, California

July 30th, 1957.

Mr. Harry H. Meisner,  
Meisner & Meisner,  
National Bank Building,  
Detroit 26, Michigan.

Dear Mr. Meisner:

I have discussed our conversation with Mr. Neilan after returning last week, and he feels as I indicated that he would.

We do not wish to sign any agreement that would cause us to lose complete freedom of action on our own part. We have given Mr. Jack Moore the opportunity to locate an acceptable buyer for our business and have an informal agreement to pay him a fee commensurate with his efforts. We had felt that your reply to Mr. Moore was as a representative of a buyer. However, it appears that your interest is a duplication of Mr. Moore's.

If you should work out a mutual arrangement with Mr. Moore, naturally we would not object.

Very truly yours,

RELIANCE STEEL &  
ALUMINUM CO.,

.....,  
WILLIAM T. GIMBEL.

c.c. to Mr. Jack Moore, 500 No. Old Ranch Road,  
Arcadia, California. [152]

# EXHIBIT G

October 7th, 1957

Mr. Harry H. Meisner,  
2231 National Bank Building,  
Detroit 26, Michigan.

Dear Harry:

I finally succeeded in getting Jack Moore to agree to give up half of his commission on the Hokin deal, with the understanding that you were giving up half of your share. This took considerable persuasion, as Moore is not an easy man to accomplish anything of this nature with. Anyway, he agreed and now you can feel easy about things.

Thank you for advising me that Hokin and Bagenhols would be arriving here next Tuesday.

I have told Hiemenz to do all the preliminary work so that we can get down to business and work up a contract immediately.



I wish you would write me confirming your agreement to split your half of the commission so that I will have proper credentials to satisfy Moore.

I enjoyed your visit and must say that you are a very persuasive man, and I understand now why you have never lost a case and hope that good luck will always accompany you in your legal work as well as in life generally.

With best wishes, I am

Very truly yours,

.....,  
THOMAS J. NEILAN.

TJN:BL

## EXHIBIT H

Los Angeles, California  
November 12, 1957

Mr. Harry H. Meisner,  
Meisner & Meisner,  
National Bank Building,  
Detroit 26, Michigan.

Dear Harry:

We are still negotiating with Mr. Hokin and his attorneys. It looks like we will consummate the deal with him and in order to expedite things I should like to have you sign the enclosed letter ad-

dressed to me, so that we can go ahead and conclude things without being held up on account of arrangements between you and Jack Moore.

Kindly send me the original copy of the letter by return Air Mail.

I hope things are going along well with you.

Very truly yours,

/s/ T. J. NEILAN,

President, Reliance Steel  
& Aluminum Co. [154]

### EXHIBIT J

Detroit, Michigan  
November 12, 1957

Mr. Thomas J. Neilan, President,  
Reliance Steel & Aluminum Co.,  
2068 East 37th Street,  
Los Angeles 58, California.

Dear Mr. Neilan:

This will confirm our understanding that the commission of 5% on the first million dollars and 2½% on any amount above the first million dollars of the net purchase price received by your company through escrow for the inventory and certain other assets covered by the purchase and sale agreement with the H. W. G. Corporation, if and when

executed, has been reduced to one-half such amount. We are not concerned with any of the leases, subleases or options.

It is understood that my one-half of such reduced amount, as my share of the commission or brokerage, will be paid direct to me upon the conclusion of the escrow and that Mr. Moore will be paid by you direct for his share of the commission or brokerage.

Cordially yours,

.....,  
HARRY MEISNER. [155]

## EXHIBIT K

Meisner and Meisner  
Attorneys and Counselors at Law  
National Bank Building  
Detroit 26, Michigan

Harry H. Meisner  
Ivan I. Meisner  
R. J. C. Dorsey  
Albert R. Grever

November 18, 1957

Thomas J. Neilan, Esq.,  
Reliance Steel & Aluminum Co.,  
2068 East 37th Street,  
Los Angeles 58, California

Dear Mr. Neilan:

Herewith enclosed is my signed statement of fees payable to me upon the closing date of the sale of Reliance assets to the H. W. G. Corporation.

You will doubtless remember when I voluntarily offered to cut my fee to one half in my endeavor to revive the deal you remarked with an evident expression of frankness that I should not be obliged to give up any part of my fee, but in the interest of promoting a harmonious relationship I thereupon suggested that my fee should be the round figure of \$30,000 in which you acquiesced.

You will therefore observe that the enclosure differs from the one you forwarded in that a slight change has been made in the last two lines of the first paragraph and a few words of the second paragraph to state clearly the fixed fee of \$30,000 payable to me upon the closing date.

You are fully aware of the untiring efforts I put forth and the considerable expense incurred in bringing you and Hokin to a mutual understanding; then, too, I have to share the fee with my own office associates. The fact is that I had earnestly figured on receiving the original fee which would have been about \$60,000. However, taking into consideration my voluntary reduction to the fixed fee of \$30,000, this is to advise you that upon the receipt of the amount of \$30,000 at the closing date it will constitute a complete payment and discharge

of you and your Company from any and all further liability whatever to me.

Meanwhile I do wish to record that all through our dealings you have been graciously considerate and I enjoyed very much working with you and I wish you good health and a full measure of happiness for long years to come.

(Enclosure)

Cordially,

/s/ HARRY H. MEISNER.

HHM.dvi-4

Air Mail [156]

## EXHIBIT L

Detroit, Michigan

November 18, 1957

Mr. Thomas J. Neilan, President,  
Reliance Steel & Aluminum Co.,  
2068 East 37th Street,  
Los Angeles 58, California.

Dear Mr. Neilan:

This will confirm our understanding that the commission of 5% on the first million dollars and 2½% on any amount above the first million dollars of the net purchase price received by your Company through escrow for the inventory and certain



other assets covered by the purchase and sale agreement with the H. W. G. Corporation, if and when executed, has been voluntarily reduced by me with your acquiescence to the fixed amount of \$30,000 (Thirty Thousand Dollars).

It is understood that such reduced amount of \$30,000 as my share of the commission or brokerage will be paid direct to me upon the closing date and that Mr. Moore will be paid by you direct for his share of the commission or brokerage.

Cordially yours,

/s/ HARRY H. MEISNER. [157]

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[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM T. GIMBEL IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT

State of California,  
County of Los Angeles—ss.

I, William T. Gimbel, being first duly sworn, depose and say:

I am a citizen of the United States, of lawful age, and reside at 740 Chaucer Road, San Marino, California.

At all times herein mentioned I was, and now am, an officer of Reliance Steel & Aluminum Co., a Corporation, one of the defendants in the action above

entitled and hereafter called "Reliance Steel." [158]

I am acquainted with Harry H. Meisner, the plaintiff above named. I first met plaintiff in his office in Detroit, Michigan, about July 20, 1957. On that occasion, plaintiff stated to me that he represented a principal who might be interested in purchasing the business and assets of Reliance Steel. Plaintiff asked me to sign an instrument which would protect him as the broker on the deal. I told him I would not sign any such instrument because Reliance Steel had an informal arrangement with Jack Moore whereunder Moore was to receive a commission if he negotiated a sale of Reliance Steel's business and assets. I also told plaintiff that the arrangement with Moore was not exclusive and we were working with other brokers and directly with prospective buyers. I further stated that, if plaintiff could arrange with Moore to split the sales commission in some manner, that would be a matter between the two of them. A few days later, after I had returned from Detroit to Los Angeles, I received a telephone call from plaintiff in which he stated, in substance, that he and Moore had agreed on a commission split and that the name of the plaintiff's principal was Hokin. He also stated that arrangements would be made for Hokin's partner, Mr. Charles Weiner, to come to Los Angeles to look over the plant and operations of Reliance Steel.

During the month of August, 1957, Hokin and

representatives of Hokin and plaintiff came to Los Angeles for the purpose of negotiating a purchase by Hokin and his associates of the business and assets of Reliance Steel. I participated in those negotiations. Hokin withdrew from the negotiations about August 27th, stating that, in his opinion, the price asked for the business and assets of Reliance Steel was too high.

In the latter part of September, 1957, plaintiff telephoned [159] me on several occasions, stating that his purpose was to get Reliance Steel and Hokin together on a deal. He stated that, if Reliance Steel would reduce its price, he would reduce his share of the sales commission by 50%. In a subsequent conversation he stated that Moore had agreed to do likewise. In a later telephone conversation, plaintiff stated that he had a new proposal from Hokin and asked me if he could bring it to Los Angeles. I requested him to tell us what the new proposal was or to submit it by mail. Plaintiff stated he would not do that because the proposal required his personal explanations. After these telephone conversations and about the end of September, 1957, plaintiff arrived in Los Angeles and brought with him a proposal from Hokin dated September 30, 1957.

I saw plaintiff about October 2, 1957, in the home of Mr. Neilan located at 433 South Arden Boulevard, Los Angeles, California. On that occasion, Neilan, plaintiff and I being present, Neilan stated in substance that he and plaintiff had had a con-

ference the preceding evening in Neilan's home and that plaintiff had persuaded him (Neilan) that a sale on the general terms outlined in the Hokin September 30 proposal as modified by a rider dated October 2, 1957, which he and plaintiff had negotiated, should be agreeable to Reliance Steel provided that the parties could work out a mutually satisfactory contract of sale and meet the other conditions set forth in the proposal and rider; that he had found plaintiff to be one of the most persuasive men he had ever met; that plaintiff was to take the October 2 rider to Chicago for the purpose of having it signed by Hokin and returned.

/s/ WILLIAM F. GIMBEL.

Subscribed and sworn to before me this 28th day of November, 1958.

[Seal]      /s/ JEAN F. BROWN,  
Notary Public in and for  
Said County and State.

My Commission Expires May 28, 1961.

[Endorsed]: Filed December 1, 1958. [160]

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[Title of District Court and Cause.]

## PLAINTIFF'S MEMORANDUM BRIEF

### Concise Statement of Facts

Counsel for Defendants has prepared an excellent concise statement of facts, about most of which

there is no dispute. Plaintiff therefore adopts paragraphs 1 to 7, inclusive, and 10, 11 and 13 of Defendants' concise statement of material facts. Paragraph 14 would likewise be acceptable if we delete the word conditional from 14a because said instrument is in writing and speaks for itself, and the same must be said for the instruments mentioned in paragraph 17. Paragraph 15 in general is accepted except where it imputes motives or an intent to represent Hokin. As to paragraph 16, Plaintiff has insufficient information to join therein. As to paragraph 8, Mr. Gimbel came to Detroit, apparently at Moore's suggestion, and Mr. Meisner was not previously informed of his identity. As to paragraph 9, Plaintiff cannot [166] accept Mr. Gimbel's version of the discussion. (See paragraph 4 herein.) As to paragraph 12, Defendants perhaps inadvertently mistake Mr. Hokin's unwillingness as an inability to pay \$3,750,000. Plaintiff is informed that Mr. Hokin is well able to raise such sum. Plaintiff therefore offers the following statement of facts:

\* \* \*

4. On or about July 20, 1957, Mr. Gimbel, acting on information furnished by Moore, came to Mr. Meisner's office at Detroit, Michigan, bringing with him an eleven-year statistical analysis of Reliance's operations, of which an exact copy is attached [167] hereto, and the first discussion was had regarding the making of a deal, resulting in Plaintiff's employment. Gimbel was and is an executive and President of that Company. [168]

\* \* \*



Dated this 2nd day of December, 1958.

/s/ HARRY H. MEISNER,  
Plaintiff, Appearing in Pro-  
pria Persona.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 4, 1958.

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[Title of District Court and Cause.]

PLAINTIFF'S ANSWER TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT

(N.B. This matter is now on the Docket for Pretrial Conference and both parties have filed extensive Briefs and analyses of facts in the case. Therefore, Plaintiff in this Answer to the Motion for Summary Judgment has not duplicated the Brief filed for Plaintiff in this cause but has only included citations on particular points involved in the Motion and Answer.)

In this case there are a number of issues, some of which are issues of law and some are issues of fact. In this Answer we will submit the testimony establishing that Defendants employed the Plaintiff to find a buyer ready, willing and able to purchase, (2.) that Plaintiff produced such a buyer, (3.) that after the buyer was found and an agreement signed Defendants refused to carry out the proposed sale. In addition Plaintiff will at the trial submit the testimony of the purchaser that he was ready, will-

ing and able to purchase but that the Defendants refused to [181] carry out the agreement. Consequently that Plaintiff is not required to show an actual sale since such a condition is waived by Defendants' refusal. In this case, having presented evidence in support of the material points in the case, Defendants' Motion for Summary Judgment should not be sustained because all of the material facts are either admitted by the Defendants or are supported by competent testimony raising issues of fact.

Defendants' Motion for Summary Judgment brings into sharp focus the issues involved in this case and the burden of proving each particular issue.

The burden of proving a cause of action, the existence of a contract, performance or waiver of the conditions, and the amount of recovery are upon the Plaintiff.

On the other hand Defendants raise affirmative defenses of illegality, in other words that Plaintiff was required to have a real estate or business chance license in California which he did not, and that Plaintiff's claim is barred for failure to present the same in the manner prescribed by California law. Also the claim that Jack Moore is a necessary party in interest and not joined herein. On these defenses burden of proof is on Defendants.

Plaintiff's Complaint alleges:

1. Employment of Plaintiff and Jack Moore "to find a purchaser ready, willing and able to pur-

chase or acquire the assets of said (Defendant) Corporation on terms mutually agreeable”;

2. “That (Defendants) agreed to pay the Plaintiff and Jack Moore 5% of the first \$1,000,000 and 2½% of the remainder of the net purchase price on such sale”;

3. “That subsequently it was agreed that one-half of said commission should be paid directly to Plaintiff and the other half to Jack Moore”;

4. That Plaintiff “fully performed said agreement by finding [182] a purchaser ready, willing and able, etc.” namely Myron Hokin or his nominee for a price of approximately \$3,750,000;

5. “That the condition as to closing of such sale has been waived by Defendants’ refusal to complete the sale.”

#### Plaintiff Has Adduced Direct and Creditable Evidence of Points (1-3) Supra

Aside from the conferences and telephone conversations which will involve testimony of the various parties, Defendants are faced with written evidence of the existence and form of the commission agreement.

Mr. Gimbel, then an executive and now President of Reliance Steel, received and retained the copy of Meisner’s July 29, 1957, letter to Moore in which Meisner in consideration of 50% of the commission disclosed the names of prospective purchasers in-

cluding Myron Hokin, and stated his understanding that the

“commission will be 5% on the first million and 2½% of all in excess thereof.”

On July 30th, 1957, Gimbel wrote Meisner “We have given Mr. Jack Moore the opportunity to locate an acceptable buyer for our business and have an informal agreement to pay him a fee commensurate with his efforts.”

Thereafter Meisner had telephone conversations with Gimbel, August 2, 1957, in which Meisner’s fee was estimated at \$62,500 and September 7, 1957, in which Gimbel claimed Meisner’s fee would be only \$50,000.

There were other conversations between the parties resulting in an agreement to cut Meisner’s fee in half and make it [183] payable to him direct. Mr. Neilan wrote Meisner on October 7, 1957, asking Meisner to confirm his agreement to split his half of the commission.

Finally on November 12, 1957, Neilan wrote Meisner asking him to sign the enclosure also dated November 12th.

That enclosure, prepared for Meisner’s signature and addressed to Neilan as President of Reliance Steel, began

“This will confirm our understanding”

thus indicating prior negotiations and the reaching of an understanding,

continuing "that the commission of 5% on the first million dollars and 2½% on any amount above the first million"

thus recognizing the pre-existence of such a commission agreement.

The enclosure then provides for cutting the commission in half.

The final paragraph evidences the definite understanding that

"My one half \* \* \* will be paid direct to me \* \* \* and Mr. Moore will be paid by you direct for his share of the commission."

As we say, Mr. Neilan in the letter and enclosure evidences an intent to confirm

"Our understanding."

There Is an Issue of Fact Whether Plaintiff Found a Purchaser Ready, Willing and Able to Purchase on Terms Agreeable to Defendants

Among the prospective purchasers for Defendants' business the first one listed in the letter of July 29, 1957, [184] from Meisner to Jack Moore, of which the copy was sent to Mr. Gimbel, Myron Hokin is listed as the first prospect.

Later on August 15th, 1957, Neilan sent a proposal to sell and lease to Hokin or his designee in the letter made Exhibit "One" to Defendants' Responses to Plaintiff's First Request for Admissions.



In response to Plaintiff's Request No. 1, Defendants admitted they were willing to sell on the terms therein specified.

In response thereto, Hokin sent back the modified offer dated September 30, 1957, which with the acceptance and rider of October 2, 1957, became the agreement Exhibit "B" attached to Defendants' First Request for Admissions.

In response to Plaintiff's Request No. 4, Defendants have admitted they were willing to sell and lease on the terms of said Exhibit B, as well they must in view of their execution of such agreement.

In response to Plaintiff's request No. 6 that Defendants admit that Hokin and his designee, the H. W. G. Corporation, were ready, willing and able to perform said agreement "B," Defendants responded that they were unable to admit or deny same.

Plaintiff proposes in this case to establish by the testimony of Myron Hokin that in addition to entering into the agreement "Exhibit B" and making the \$250,000 deposit required thereby, he and the H. W. G. Corporation were in fact ready, willing and able to complete such purchase but that after Mr. Neilan's death Defendants were unwilling to go through with the deal.

Therefore, unless Defendants are now willing to admit such facts, an issue of fact exists which must be resolved by the taking of testimony at trial. [185]

Defendants by Their Refusal to Complete the Sale to a Ready, Willing and Able Purchaser, Have Waived the Condition That Plaintiff's Commission Was Payable Upon Closing of the Sale

As stated in the preceding section Plaintiff will establish by the testimony of Myron Hokin that after the parties had entered into the agreement for Sale and Lease (September 30, 1957, and Rider October 2, 1957), which Defendants have admitted contained terms satisfactory to them, that he and H. W. G. Corporation made the \$250,000 deposit and were ready, willing and able to purchase but that Defendants would not go through with the deal.

Defendants now assert as a defense to this action the claim that the sale was never carried out.

But it is well established that a party to a contract cannot urge his own refusal to perform or permit the performance of a condition as a defense.

Richardson vs. Walter Land Co. (2d DCA, Cal., 1953), 258 Pac. (2d) 42;

Taylor vs. Simi Const. Co., 23 Cal. App., 308, 137 Pac. 1095;

Greenberg vs. Sakwinski, 211 Mich. 498, 179 NW 234;

Hayes vs. Beyer, 284 Mich. 60, 278 NW 764.

As to such facts—either Defendants must now withdraw their statement of inability to admit or deny Hokin's willingness to perform or an issue of fact exists in relation thereto which must be tried.

No License is Required by the California Statutes  
to Find a Purchaser Ready, Willing and Able  
to Purchase

Defendants have urged the affirmative defense that Plaintiff admits he has no real estate or business chance license. [186]

The facts are that Plaintiff is a Michigan attorney, that he had a Chicago contact interested in buying a steel mill, and that Mr. Gimbel, Defendants' officer, came to Mr. Meisner's office at Detroit to broach the sale. Under these circumstances it would seem that the application of California statutes might be questioned.

But Plaintiff need not go so far, since the California statutes do not prohibit agreements merely to find a purchaser.

In his Complaint Plaintiff claims a commission for finding a purchaser ready, willing and able. Neither the California real estate or business opportunity statutes require a license therefor:

Crofoot vs. Spivak, 113 Cal. App. (2) 146,  
248 Pac. (2) 45;

Shaffer vs. Beinhorn (Cal. Sup. Ct. 1923),  
190 Cal. 569, 213 Pac. 960;

Palmer vs. Wahler (3rd DCA Cal. 1955),  
285 Pac. (2) 9.

The crux of earning such a commission is knowing or finding such a buyer. Where a corporation such as Reliance has its own brokers, negotiators and attorneys, a premature disclosure might be fatal. That

such was the service to be performed is substantiated by the Defendants' statement in the 9th paragraph (page 3) of their Concise Statement of Facts in the Memorandum filed for the pretrial conference that:

"9. On July 20, 1957, Gimbel visited Plaintiff—visited in Plaintiff's law offices in Detroit. Plaintiff refused to divulge his client's identity without first obtaining Reliance Steel's written commitment that he, Plaintiff would be entitled to a broker's commission in the event of consummation of a sale of the business \* \* \*" [187]

The substance of Plaintiff's employment being the finding or disclosing of a purchaser, is not within the statutes.

It should be noted that in connection with the proposed sale, Defendants had reserved their own freedom of action, had other brokers and their own staff of negotiators and attorneys, as indicated by the many Exhibits submitted by Defendants.

### Does Plaintiff Have a Separate Cause of Action Without Jack Moore

It is Plaintiff's understanding that in addition to this suit, Jack Moore has instituted a separate action for his commissions in the California Courts to which Defendants but not Plaintiff are parties.

Defendants allege in this action that Moore is an indispensable party to this action. The facts show otherwise.

From the first Defendants insisted on their own complete freedom of action. In the letter from Gimbel to Meisner, July 30, 1957, Mr. Gimbel said

“We do not wish to sign any agreement that would cause us to lose complete freedom of action on our part.”

Defendants then had other brokers and also prospects for direct sales and did not wish to be tied down.

Later the parties discussed the direct payment of Meisner's share to Meisner. This was discussed in August 2, 1957, and September 7, 1957, phone calls between Gimbel and Meisner.

And while Defendants now object to a suit without Moore, they had no hesitancy in direct negotiations with Meisner or agreements with Meisner alone.

For instance, Mr. Neilan in the letters of October 7, 1957, and November 12, 1957, negotiated directly with Meisner regarding his commission without Moore. And to top it off Neilan in the [188] enclosure to Meisner November 12, 1957, recognizes the understanding that Meisner and Moore are to receive their respective commissions direct.

Plaintiff's action is predicated on this separation of the fee into two shares. (See Plaintiff's Complaint, page 2, Par. 5.)

It is submitted that Plaintiff's claim for his separate share of the fee is supported by substantial



evidence raising a question of fact for determination at the trial of this cause.

Was Presentation of the Claim to the State Appointed Executor Required as a Prerequisite to Action in the Federal Court

The Defendant executor contends that this action against the executor is barred for failure to present the claim to the executor for allowance or disallowance prior to suit in the Federal Court.

It is conceded, however, that the claim was presented prior to filing the amended complaint herein, and has been denied by the executor.

It is submitted that such defense is not valid because compliance with state requirements of presentation of claims in actions founded on diversity of citizenship is not a prerequisite to Federal jurisdiction. In this case diversity of citizenship between the parties and consequent jurisdiction is not disputed in the motion for summary judgment.

Likewise, California law permits a suit after denial of claim, and it is submitted that the amendment of the complaint and the executor's denial would satisfy the requirement for presentation in the state court.

That such compliance with the state law is not required: [189]

In *Clark vs. Bever*, 139 US 96, the United States Supreme Court said (103)

The controverted question of debt or no debt, is one which, if the representative of the decedent is a citizen of a State different from that of the other party, the party properly situated has a right given by the Constitution of the United States to have tried originally or by removal, in a Court of the United States, which cannot be defeated by state statutes enacted for the more convenient settlement of estates of decedents.

See also *Hess vs. Reynolds*, 113 US 73.

It is therefore submitted that Defendants' Motion for Summary Judgment should be denied for the foregoing reasons as verified in Plaintiff's Affidavit of Merits and in Opposition to Defendants' Motion for Summary Judgment attached.

Dated this 17th day of December, 1958.

/s/ HARRY H. MEISNER,  
Plaintiff, Appearing in Pro-  
pria Persona. [190]

[Title of District Court and Cause.]

AFFIDAVIT OF MERITS AND IN OPPOSITION  
TO DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

State of Michigan,  
County of Wayne—ss.

Harry H. Meisner, being duly sworn, deposes and says that he is the Plaintiff in the above-entitled

cause and appearing in Propria Persona and that the matters set forth in the foregoing Answer to Defendants' Motion for Summary Judgment are true of his own knowledge except such as are stated upon information and belief and as to such matters he believes the same to be true and that such matters are incorporated in this Affidavit by reference as though repeated fully herein; and Deponent further says that he believes that he has a good and meritorious cause of action in this cause and that Defendants' Motion for Summary Judgment is not well founded for the reasons stated in said Answer to the Motion for Summary Judgment.

/s/ HARRY H. MEISNER.

Subscribed and sworn to before me this 17th day of December, 1958.

/s/ DOLORES V. IVERSON,

Notary Public, Oakland County, Michigan (Acting  
in Wayne County, Michigan).

My commission expires October 26th, 1962.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 19, 1958. [191]

In the United States District Court, for the  
Southern District of California, Central Division

Civil No. 525-58-WM

HARRY H. MEISNER,

Plaintiff,

vs.

RELIANCE STEEL & ALUMINUM CO., a California Corporation, and SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association, Executor of the Estate of Thomas J. Neilan, Deceased,

Defendants.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUMMARY JUDGMENT

The motion for summary judgment of defendants Reliance Steel & Aluminum Co. and Security-First National Bank, as Executor of the Will of Thomas J. Neilan, deceased, pursuant to Rule 56 of the Federal Rules of Civil Procedure, having come on regularly for hearing on the 8th day of December, 1958, before the above-entitled court, the Honorable William C. Mathes, Judge Presiding, notice of such hearing having been duly given, plaintiff appearing in propria persona and Messrs. Lawler, Felix & Hall, William T. Coffin, Esq., and Robert Henigson, Esq., appearing for said defendants, and the court being fully advised and having determined as a matter of law that defendants and each of them [194]

are entitled to a summary judgment, the court makes its findings of fact, conclusions of law and judgment as follows:

### Findings of Fact

1. Jurisdiction of the court is founded upon diversity of citizenship and an amount in controversy which exceeds, exclusive of interest and costs, the sum of \$3,000.00.

2. Plaintiff is a citizen of the State of Michigan.

3. Defendant Reliance Steel & Aluminum Co. (hereinafter called "Reliance Steel") is a corporation organized and existing under the laws of the State of California.

4. Defendant Security-First National Bank (hereafter called the "Bank") is a national banking association organized and existing under the laws of the United States of America, having its principal place of business in the State of California. The Bank is sued in its capacity as Executor of the Will of Thomas J. Neilan (hereinafter called "Neilan") who died November 17, 1957. In his lifetime, Neilan was the president and one of the directors, and indirectly controlled a majority of the shares of the issued and outstanding capital stock, of Reliance Steel. The Bank is the duly appointed, qualified and acting Executor of Neilan's Will in probate proceedings now pending in the Superior Court of the State of California in and for the County of Los Angeles (L. A. Superior Court No. 397,909).



5. There is no genuine issue as to any material fact to be tried or determined herein.

6. Plaintiff was not a party to any contract of employment relative to the sale of the assets or the capital stock of Reliance Steel to which Reliance Steel and Neilan, or either of them, were [195] parties.

7. If any contract of employment relative to the sale of the assets or the capital stock of Reliance Steel existed to which Reliance Steel and Neilan, or either of them, were parties, payment of compensation thereunder was contingent upon the consummation of a sale.

8. No sale of the assets or the capital stock of Reliance Steel was consummated and no valid and enforceable contract relative to such sale was made.

9. Plaintiff actively participated in the negotiations conducted within the State of California relative to a contract for the sale of the assets or the capital stock of Reliance Steel.

10. Plaintiff was not at any time while actively engaged within the State of California in such negotiations licensed as a business opportunity broker or salesman or as a real estate broker or salesman by the Real Estate Commissioner of the State of California.

11. Plaintiff failed to file a creditor's claim against Neilan's estate with the clerk of the court in which the proceedings relative to such estate were

pending and failed to present such creditor's claim to the Bank, as such Executor, prior to the commencement of this action.

### Conclusions of Law

1. There was no contract between Reliance Steel and Neilan, or either of them, on the one hand, and plaintiff, on the other.

2. No valid and enforceable contract of purchase and sale covering the assets or the capital stock of Reliance Steel was ever made. [196]

3. No actionable claim in favor of plaintiff existed against the Bank, as such Executor, prior to the commencement of this action.

### Summary Judgment

It Is Therefore Ordered, Adjudged and Decreed that the motion for summary judgment of defendants be and the same hereby is granted, that plaintiff have and recover nothing by his amended complaint, and that the action be dismissed, each party to bear own costs. [Fed. R. Cir. P. 54 (d).]

Dated this 29th day of December, 1958.

/s/ WM. C. MATHES,

Judge of the United States  
District Court.

Lodged December 1, 1958.

[Endorsed]: Filed and entered December 31, 1958. [197]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Harry H. Meisner, Plaintiff and Appellant, hereby appears to the United States Court of Appeals for the Ninth Circuit from the Summary Judgment entered in this cause on December 31, 1958, by the Honorable William C. Mathes, District Judge.

Dated this 19th day of January, 1959.

/s/ HARRY H. MEISNER,  
Plaintiff and Appellant, Ap-  
pearing in Propria Persona.

[Endorsed]: Filed January 20, 1959. [198]

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[Title of District Court and Cause.]

### SPECIFICATION OF POINTS, ETC.

Plaintiff and Appellant hereby specifies the following points, assignments of error and reasons and grounds for Appeal herein:

That the Court erred in granting Defendants' Motion for Summary Judgment contrary to Plaintiff's Affidavit of Merits, Answer to said Motion; proffer of evidence on all material points and the admissions contained in Defendants' Responses to Plaintiff's First Request for Admissions and for the following reasons:

A. That the Court erred in its finding of fact No. 5, that there were no genuine issues of fact to be tried, and in its findings of fact 6, 8, 9 and 10 because Plaintiff adduced substantial evidence:

6. That Defendants entered into a contract to pay Plaintiff a commission for finding a purchaser ready, willing and able to purchase the assets or capital stock of Reliance Steel, although as stated in finding No. 7 such payment was conditioned upon the consummation of such sale.

8. That although the sale was never consummated, [200] Plaintiff found a purchaser ready, willing and able to purchase such assets on terms satisfactory to Defendant; that a written agreement was entered into between Defendants and such purchaser, and the purchaser made a deposit of Two Hundred and Fifty Thousand Dollars (\$250,000); but that Defendants, after the death of Mr. Neilan, refused to complete the sale, although the purchaser was ready, willing and able to consummate the sale.

9. & 10. That Plaintiff's employment was not for the purpose of negotiating a sale, but merely for the purpose of finding a purchaser.

B. That the Court erred in its conclusions of law as follows:

1. & 2. For the reasons stated in Paragraphs A6 and A8 above.

3. Because the State of California requires no license for the purpose of finding a purchaser for

real estate or assets, and Plaintiff's activities herein were lawful without license.

4. Because no presentation of claim in a State Court was required as a condition precedent to action in the United States District Court based on diversity of citizenship, and a state law cannot deny such right of action.

C. Because there was substantial evidence in support of Plaintiff's contention that Defendants, by their refusal to complete the sale, waived the requirement that a sale should be consummated as a condition to liability for the fee.

D. Because Plaintiff was supported in each of the issues of fact and law by credible evidence or admissions of the Defendant, and because Plaintiff as a matter of law would be entitled [201] to recover in this action if the trial Court upon hearing the evidence should believe same and make findings of fact for Plaintiff.

/s/ HARRY H. MEISNER,  
Plaintiff and Appellant, Ap-  
pearing in Propria Persona.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 20, 1959. [202]



[Title of District Court and Cause.]

### DOCKET ENTRIES

6/2/58—Fld. compl. for Breach Contract. Issued Sums Made JS-5.

12/31/58—Fld. defts. proposed Finds. of Fact, Concls. of Law and mot. for Summary Judgmt. & Ord. thereon grant summary judgment., pltf. to take nothing by his amended complt. dismiss this action & each party to bear own costs, etc.

(Ent. 12/31/58, & not. attys.) JS-6.

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[Title of District Court and Cause.]

### CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 208, inclusive, containing the original:

Complaint, filed 6/2/58.

Amended Complaint, filed 7/2/58.

Answer of Defendant Reliance Steel & Aluminum Co., to Plaintiff's Amended Complaint, filed 7/7/58.

Answer of Defendant Security-First National Bank, etc., to Plaintiff's Amended Complaint, filed 7/7/58.

Interrogatories by Defendant Reliance Steel & Aluminum Co. to Plaintiff, filed 7/3/58.

Plaintiff's Answers to Interrogatories of Reliance Steel & Aluminum Co., filed 7/11/58.

Reliance Steel & Aluminum Co. First Request for Admissions, filed 8/5/58.

Plaintiff's Admission in response to Defendants' First Request for Admissions, filed 8/20/58.

Reliance Steel & Aluminum Co. Second Request for Admissions, filed 8/29/58.

Reliance Steel & Aluminum Co. Second Interrogatories, filed 8/29/58.

Plaintiff's Admission pursuant to Defendants' Second Request, filed 11/3/58.

Plaintiff's Answers to Second Interrogatories, filed 11/3/58.

Defendants' responses to Plaintiff's First Request for Admissions, filed 11/10/58.

Defendants Memorandum of Contentions of Fact and Law, filed 11/19/58.

Defendants' Notice of Motion for Summary Judgment, filed 12/1/58, with supporting Affidavit Wm. T. Gimbel, etc.

Plaintiff's Memorandum Brief (Concise Statement of Facts), filed 12/4/58.

Plaintiff's Answer to Defendants' Motion for Summary Judgment with Affidavit of Merits and in opposition to Defendants' Motion for Summary Judgment, filed 12/19/58.

Findings of Fact, Conclusions of Law and Summary Judgment, entered 12/31/58.

Notice of Appeal.

Specification of Record and Specification of Points, etc.

Designation of Additional Portions of Record on Appeal.

B. Copy of Docket Entries.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has been paid by appellant.

Dated: February 3, 1959.

[Seal] JOHN A. CHILDRESS,  
Clerk.

By /s/ WM. A. WHITE,  
Deputy Clerk.

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[Endorsed]: No. 16358. United States Court of Appeals for the Ninth Circuit. Harry H. Meisner, Appellant, vs. Reliance Steel & Aluminum Co., a Corporation and Security-First National Bank of Los Angeles, Executor of the Estate of Thomas J. Neilan, Deceased, Appellee. Transcript of Record. Appeal From the United States District Court for the Southern District of California, Central Division.

Filed: February 4, 1959.

Docketed: February 11, 1959.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

